



Digitized by the Internet Archive
in 2013

<http://archive.org/details/committeereports05mary>

Maryland. Constitutional Convention Commission.
Committee on Political Subdivisions and Local
Legislation.

Reports, 1st (rev.) - 8th (final).

C O N S T I T U T I O N A L C O N V E N T I O N C O M M I S S I O N

FIRST REPORT (AS REVISED)

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

March 11, 1966

RE: TYPE OF POLITICAL SUBDIVISIONS, MANDATORY
HOME RULE AND DESIRABILITY OF PROVISIONS
FOR AGREEMENT AND INTERGOVERNMENTAL
COOPERATION TO FORM NEW CIVIL DIVISIONS

The Committee on Political Subdivisions and Local Legislation refers the following three major policy questions to the full Commission:

1. What political subdivisions should be used?
2. Whether home rule should be mandatory for all counties (Baltimore City herein considered as a county)?
3. Whether the constitution should specifically permit intergovernmental relations (such as metropolitan governments, agreements between municipalities, etc.)?

WHAT POLITICAL SUBDIVISIONS SHOULD BE USED
(COUNTY, CITY, METROPOLITAN AREA, REGION, ETC.)?

The Committee recommends the present county system of government be retained, with Baltimore City treated as a county. The Baltimore City charter and all Baltimore City enabling provisions should be completely shifted from the constitution to statutes, thereby treating Baltimore City as a home rule county. The Committee concluded there was no longer reason to give Baltimore City a special status in the constitution.

The Committee recommends that the constitution should give the legislature the power to provide for new counties, cities, or other political subdivisions, with a possible recommendation to the legislature to abolish those cities that are performing no real functions at the present time. The Committee found that many small incorporated cities in the State have very few functions, have extremely small populations, and might better give up their functions to the counties in which they exist. However, the Committee felt that in many of the rural counties, these small cities are the principal units of government, and the only way people can get a high level of services is by forming such municipal governments. The Committee, therefore, concluded that eliminating the cities would be a great oversimplification because such action would eliminate some of the most active units of local government in the State and the most responsive.

The Committee decided not to recommend the replacement of the counties with a series of five large districts based upon metropolitan areas (Baltimore metropolitan area, Washington metropolitan area, Western Maryland, Southern Maryland, and Eastern Shore). The Committee felt this would create large amorphous units of local government which would depersonalize these governments and not provide for enough variety in the solution of local government problems.

WHETHER HOME RULE SHOULD BE MANDATORY FOR ALL COUNTIES
(BALTIMORE CITY HEREIN CONSIDERED AS A COUNTY)?

The Committee recommends the compulsory home rule for all counties and incorporated towns through a general grant of power

in the constitution. Coupled with this general provision for a compulsory home rule would be a provision prohibiting the legislature from passing specific laws for particular counties or cities. The Committee favored mandatory home rule for cities and counties for several reasons. Every year the state legislature is tied up for a good percentage of its seventy-day session passing purely local legislation, a problem that would be removed by mandatory home rule. There also is the problem that non-home rule counties and cities are often subject to state dictation as a result of their local legislation having to be enacted by the entire legislature. The Committee feels that mandatory home rule will center power in fewer hands and make the lines of responsibility in local government clearer. Mandatory home rule would also secure equal status for each local unit in the Maryland government.

Because there is some question as to whether all rural counties are equipped to handle full home rule powers, the Committee recommends that some form of aid should be provided to rural counties by the state government. The Committee recommends the establishment of a Department of Local Government Affairs similar to that now existing in the State of Pennsylvania to help non-home rule counties to smoothly make the transition to effective home rule.

WHETHER THE CONSTITUTION SHOULD SPECIFICALLY PERMIT
INTERGOVERNMENTAL RELATIONS (SUCH AS METROPOLITAN
GOVERNMENTS, AGREEMENTS BETWEEN MUNICIPALITIES, ETC.)?

Although the Committee decided not to provide specifically for metropolitan forms of government, it was decided that more and

more governmental problems in Maryland are those of shared responsibility rather than the exclusive concern of one level of government. It was felt that the constitution therefore should positively sponsor the solution of public problems through cooperative efforts.

The Committee therefore recommends that an article be included in the constitution specifically providing for intergovernmental cooperation except as limited by general law. Although it is almost impossible to conceive that any other provision of the constitution would prohibit intergovernmental cooperation, the Committee believes that the presence of this article will serve the useful purpose of stressing intergovernmental cooperation, which appears to offer the best means of solving the increasingly difficult urban problems straddling political boundary lines. It also will provide for creating new political subdivisions.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

MRS. GAYLE S. SMITH
4005 Tennessee Road
Hyattsville, Maryland 20782

CONSTITUTIONAL CONVENTION COMMISSION

SECOND REPORT

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

MAY 16, 1966

RE: HOME RULE POWERS FOR SUBDIVISIONS AND SELF-ENFORCING
CONSTITUTIONAL PROVISIONS FOR MANDATORY HOME RULE.

The Committee on Political Subdivisions and Local Legislation refers the following two additional policy questions to the full Commission:

1. What home rule powers will be provided to the subdivisions?
2. Whether a self-enforcing provision to establish mandatory home rule in the subdivisions should be included in the text of the constitution itself?

WHAT HOME RULE POWERS WILL BE PROVIDED TO THE SUBDIVISIONS?

The Committee recommends that the constitution provide that home rule counties and cities can exercise any power not specifically denied to them by general law, the home rule charter, or the state constitution.

This broad grant of power endows home rule localities, through the constitution, with all the lawmaking power of the state legislature but permits the legislature to deny localities any power by general act. This provision thus sets the home rule localities free to solve any problem they wish unless the state legislature specifically denies them the power to solve that problem through general

legislation. Thus the presumption in judicial interpretation would be that the locality has the power to act unless it has been specifically denied.

The principal merit of this plan is that it frees the home rule localities from having to seek permission of the state legislature before they can move into a new area of governmental endeavor. It thus stimulates initiative in solving problems at the local level. It also frees the home rule localities from being hemmed in by the dead hand of a state legislature that refuses to act.

The presumption under this plan is that the home rule localities will be protected from undue interference by the state legislature by the fact that any withdrawal of power will have to be by general legislation. Thus, to withdraw power from a particular local subdivision, the state legislature would be required to withdraw power from all the local subdivisions in the same classification group simultaneously. The assumption is that such a withdrawal of power from all the subdivisions in a particular classification would be very difficult to achieve unless it had the support of a majority of the subdivisions and a majority of the voters in the subdivisions.

This broad grant of home rule powers, in effect, gives all residual powers of government to the home rule localities, much as individual states receive all residual powers under the United States Constitution. At the same time, however, this approach leaves the state legislature free (through its power of withdrawal) to solve on a statewide and regional basis those problems which have outgrown the boundaries of a particular subdivision or group of subdivisions. The goal here is to unshackle the home rule localities from domination

by the state legislature, but at the same time not to shackle the ability of the state legislature to grapple with statewide problems and regional problems.

This plan is a radical departure from the method by which home rule powers are handled under the present Maryland Constitution. Article XI (City of Baltimore) and Article XI A (Local Legislation) specifically give jurisdiction over the determination of home rule powers to the state legislature. In fact, under the present Constitution, the state legislature reserves the power to abolish all home rule powers if it so desires.

The effect of these two constitutional provisions has been to shackle the home rule governments in Maryland, forcing them to get a specific grant of power from the state legislature before they could attempt to solve new and unusual problems. It has also left the home rule localities completely at the mercy of "ripper" bills passed in the state legislature which take powers away from the home rule governments and vest them in the local delegation to the state legislature. Adoption of a broad grant of home rule powers would help to ameliorate both of these problems in Maryland local government.

In fact, there is some concern on the part of the Committee that even the broad grant of home rule powers may not go far enough in terms of protecting the home rule localities from undue interference in local problems by the state legislature. The tradition in Maryland has been for the state legislature to erode away the home rule powers of the localities by passing "general" legislation which, in reality, is quite specific in nature and likely to apply only to one subdivision. This tradition has been strengthened through a pattern of

decisions by the Maryland Court of Appeals which has held that so-called "general" laws may be local in effect. Classification of local governments on the basis of population has not proved to be an effective protection for home rule powers because often the classifications established by the state legislature for "general" legislation contain only one particular home rule government (i.e., Baltimore City).

Thus, there is some concern on the part of the Committee that a broad definition of home rule powers might be included in the constitution so as to further protect the home rule localities. There is general agreement on the part of the Committee, however, that there should not be a specific delegation of home rule powers spelled out in detail in the constitution. Such a specific delegation of powers would restrict the legislature's ability to grapple with local problems that subsequently become of metropolitan or state-wide importance. It would also make the new constitution overly specific and thus more likely to become quickly outdated.

WHETHER A SELF-ENFORCING PROVISION TO ESTABLISH
MANDATORY HOME RULE IN THE SUBDIVISIONS SHOULD BE
INCLUDED IN THE TEXT OF THE CONSTITUTION ITSELF?

The Committee has concluded that mandatory home rule can best be achieved in Maryland by requiring each of the twenty-three counties and Baltimore City to have a home rule form of government vested in the people of the local subdivision. In order to achieve this goal, the Committee recommends that a self-enforcing clause be included in the constitution which would automatically create a home rule government for those local subdivisions which are reluctant to form

one on their own. It is hoped that the existence of such a self-enforcing clause would spur the local subdivisions to quickly form home rule governments of their own making in order to avoid having to accept a general home rule government designed by the state legislature. The constitution would also provide that existing county commissioner governments could draw up home rule governments which would then be submitted to a referendum by the voters of the particular local subdivision.

The Committee believes the best method for achieving this goal would be to give the state legislature the power to create three or four optional county home rule governments which a county might adopt. The constitution would then require that one of these optional forms of local government automatically become the county's home rule government if the county refused to take any form at all. Once the compulsory home rule government had been established in the county, the voters of the county would still have the power to create their own form of government--either by adopting a completely new home rule government of their own or by amending the compulsory home rule government more to their liking.

The Committee is opposed to giving the legislature the power to create home rule governments without having the new government adopted by the voters of the subdivision at a referendum. The Committee believes that giving the legislature the power to create, change, or abolish home rule governments would eventually lead to legislative domination of the particular home rule government.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

11-2 GAYLE S. SMITH
7-20-66
11-20-66

CONSTITUTIONAL CONVENTION COMMISSION

THIRD REPORT

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

May 27, 1966

RE: THE ROLE OF THE REFERENDUM IN LOCAL GOVERNMENT,
THE FINANCIAL POWERS OF THE SUBDIVISIONS, AND
CLASSIFICATION OF COUNTIES AND CITIES FOR
GENERAL PURPOSE LEGISLATION.

The Committee on Political Subdivisions and Local Legislation refers the following three additional policy questions to the full Commission:

1. What should be the role of the referendum in local government?
2. What should be the financial powers of the subdivisions?
3. Should cities and counties be classified by the state legislature for general purpose legislation?

WHAT SHOULD BE THE ROLE OF THE REFERENDUM IN LOCAL GOVERNMENT?

The Committee recommends that the constitution should require a referendum on the adoption of the basic documents of government of the home rule subdivisions and on all amendments to the basic documents of the home rule subdivisions. Requiring a referendum in each case thus puts control of the basic document of the home rule subdivision directly in the hands of the voters of these subdivisions. The Committee also recommends, however, that the home rule governments of the subdivisions be permitted to submit amendments to the basic document directly to the people without having to go through a

petition process or a charter committee process. The Committee also has discussed at length the question of providing in the constitution for an initiative and referendum where legislation enacted by the home rule subdivisions themselves is concerned. The Committee has concluded that it would be best not to specify in the constitution for all home rule governments exactly what use they will make of the initiative or the referendum where local legislation is concerned. The Committee recommends that each home rule government be permitted to decide in the drawing and adoption of its own document whether or not it will have an initiative or a referendum for local legislation. The feeling of the Committee is that those subdivisions that wish to use the initiative and referendum be free to do so, but that there be no constitutional compulsion for any local subdivisions to make use of these governmental devices.

WHAT SHOULD BE THE FINANCIAL POWERS OF THE SUBDIVISIONS?

The Committee recommends that the constitution place no limitations whatsoever on the financial power of the subdivisions.

The present Constitution places certain limitations on the powers of the subdivisions to raise tax revenues and to borrow money. One of these provisions provides that certain subdivisions must receive the approval of the General Assembly before they can borrow money. Another provision provides that the creation of any bonded debt must be submitted to a referendum of the voters. Still another provision provides that bonded debt may not be contracted for a period greater than forty years.

The Committee view is that the home rule subdivisions should have all financial powers except those specifically denied to them

by the General Assembly through general purpose legislation. The Committee feels that it is the legislature which should set the financial limitations on the subdivisions rather than the constitution. The effect of the present Constitution has often been to hamstring local governments because they had to go "hat in hand" to the legislature in order to receive permission to float necessary bond issues. These provisions have also limited the ability of home rule local subdivisions to pass certain types of tax legislation. It is the feeling of the Committee that the constitution should not bind the home rule subdivisions in any way and that if, in the future, limitation on the financial powers of the subdivisions becomes necessary, such limitations should be applied by the state legislature rather than the constitution.

The Committee also has addressed itself to the problem of the state legislature creating jobs and government agencies which must be paid for by the local subdivisions. It is the view of the Committee that the state government should provide the necessary funds for the jobs and the agencies which it creates. The Committee, therefore, feels that the constitution should require that any state legislation requiring financial payment by the local subdivisions must first be submitted to the local government of the subdivision for approval and also be subject to a permissive referendum by the voters of the subdivision. (A permissive referendum would be one in which a certain number of signatures gathered by petition would put the expenditure in question on the ballot at the next general election.)

The Committee also addressed itself to the problem of whether the constitution should require that bond issues by local governments be automatically submitted to a referendum by the voters in the general election. Here again, the Committee decided that this question should be left to each local subdivision to decide for itself in the drawing of its basic document of home rule government.

SHOULD CITIES AND COUNTIES BE CLASSIFIED BY THE STATE
LEGISLATURE FOR GENERAL PURPOSE LEGISLATION?

The Committee recommends that the General Assembly be given the power to classify counties and cities for general purpose legislation. The present Constitution of Maryland allows for classification by the state legislature of cities for the purpose of general purpose legislation. In practice, however, the General Assembly of Maryland has tended to treat the cities as a single classification and has not taken advantage of its power to classify cities for legislative purposes.

The Committee recommends that classification powers be granted in the new constitution, however, because of the broad grant of power which is being given to each of the home rule subdivisions. This broad grant of power renders to the subdivisions all powers not specifically denied to them by the General Assembly through general purpose legislation. Under this broad grant of power, therefore, if a subdivision should start engaging in practices that are detrimental to the State as a whole, the General Assembly would have to pass laws applying to the entire State in order to bring this one subdivision under control. The Committee feels that there would be little likelihood of such statewide legislation being enacted to fulfill the needs of one particular subdivision.

Therefore, in order to give the General Assembly a measure of control over the subdivisions, the Committee recommends that the General Assembly be permitted to classify the subdivisions into groups for purposes of general legislation. A general law thus would become any law that applied to two or more subdivisions. In fact, in view of the pattern of decisions before the Maryland Court of Appeals on the question of general legislation, it appears that a general law can be one that affects only one subdivision provided the problems of that subdivision are of statewide importance.

What the Committee is trying to do here is free both the home rule governments and the state legislature to solve the problems of the people of Maryland. Under the broad grant of home rule powers, the local subdivision is given freedom to do everything it can to solve its own problems. On the other hand, the power of classification gives the General Assembly the power to reach down and take over the problems of that particular subdivision, or a group of subdivisions, when they become of statewide concern. Thus the effect of the broad grant of home rule power, coupled with the power of classification in the state legislature, unshackles the local government but, at the same time, leaves the state legislature a high measure of control over all the local subdivisions of the State of Maryland.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

CONSTITUTIONAL CONVENTION COMMISSION

CONTINUATION OF

THIRD REPORT

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

May 27, 1966

The Committee on Political Subdivisions and Local Legislation recommends that the following question be referred to the full Commission:

4. Should a referendum be provided when the state legislature creates new units of government or changes existing units of government?

Article XIII of Section 1 of the present Constitution of Maryland provides that the General Assembly may organize new counties only with the consent of the majority of the legal voters residing within the limits of the new county. The existing Constitution also provides that the lines of any county and Baltimore City may not be changed without the consent of the legal voters residing in the portion of the county or the city which would be moved into a new unit of government. In addition, Section 1 provides that no new county organized by the General Assembly shall contain less than 400 square miles nor less than 10,000 white inhabitants.

The Committee recommends that the new constitution retain the concept of having the creation of any basic unit of government being submitted to the voters of that new unit of government. The Committee feels this call for a referendum should be specifically required in the case of the creation of new counties or any changing of existing county lines or the existing boundaries of Baltimore City. The Committee feels

strongly, however, that this requirement of a referendum should extend only to the basic unit of government (county, city, etc.) and not to units of government such as port authorities, water authorities, pollution authorities, taxing authorities, or metropolitan governments composed of counties and cities.

The Committee recommends that the present language of the Constitution requiring that a county contain no less than 400 square miles nor less than 10,000 white inhabitants, be eliminated from the Constitution altogether. The Committee feels that the question of the size of a unit of government, both in terms of area and population, should be left to the state legislature.

In the present Constitution of Maryland, Article XIII, Sections 2 through 6, are totally concerned with the creation of Wicomico County from parts of Worcester and Somerset counties. This portion even goes to the extent of outlining the exact boundaries of Wicomico County in great detail and lists the various county officials to be appointed. The Committee recommends that all of this constitutional material concerning Wicomico County be eliminated from the Constitution and effectuated by statutes passed by the state legislature under the new constitution.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

CONSTITUTIONAL CONVENTION COMMISSION

FOURTH REPORT

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

July 17, 1966

RE: ALTERNATIVE ARTICLES ON LOCAL GOVERNMENT.

The Committee on Political Subdivisions and Local Legislation recommends two Local Governmental Articles to the Constitutional Convention Commission for consideration. The first suggested article adopts a "status quo" approach and basically preserves the present structure of Maryland local government. The second suggested article adopts a more advanced approach in that it greatly broadens the power of the subdivisions in Maryland local government.

First Alternative Article

Section 8.01. Organization of Local Government. The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries, including provisions:

(1) For optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

(2) Self-Executing Home Rule Powers. For the adoption or amendment of charters by any county or Baltimore City, in accordance with the provisions of section 8.02 concerning home rule for local units.

Section 8.02. Home Rule for Charter Counties and Baltimore City.

(a) On demand of the executive and legislative authority of any county or the City of Baltimore, or on petition bearing the signatures of 10 percent of the qualified voters (provided that in any case 10,000 signatures shall be sufficient to complete a petition), the officer or agency responsible for certifying public questions shall provide at the next general election for the election of a charter board of five registered voters from said county or city. Nominations for members for said charter board may be made not less than forty days prior to said election by the executive and legislative authority of said county or city, or not less than twenty days prior to said election by petition bearing the signatures of 5 percent of the qualified voters (provided that in any case 2,000 signatures shall be sufficient to complete a nominating petition).

(b) At said election the ballot shall contain the names of said nominees and shall be so arranged as to permit the voter to vote for or against the creation of the charter board. If the majority of the votes cast for and against the creation of said charter board shall be against said creation, the election of the members of such charter board shall be void, but if such majority shall be in favor of the creation of said charter board, then the five nominees receiving the largest number of votes shall constitute the charter board.

(c) Any proposed charter or charter amendments shall be published by the charter board, distributed to the qualified voters and submitted to them at the next general election not less than

thirty days after publication. The executive and legislative authority of the county or city shall, on request of the charter board, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution, and submission of its proposals.

(d) A charter or charter amendments shall become effective if approved by a majority vote of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local executive and legislative authority. The charter shall become the law of said county or city, subject only to the Constitution and public general laws of this State, and any public local laws inconsistent with the provisions of said charter and any former charter of said county or city shall be thereby repealed.

(e) The State legislature shall by public general law provide a grant of express powers for such counties or city as may form a charter under the provisions of this Article. Such express powers shall not be enlarged or extended by any charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly.

(f) From and after the adoption of a charter by the City of Baltimore or any county of this State, no public local law shall be enacted by the State legislature for said city or county on any subject covered by the express powers granted as above provided. Any law so drawn as to apply to two or more of the geographical subdivisions of this State shall not be deemed a local law. The term "geographical subdivision" herein used shall be taken to mean the City of Baltimore or any of the counties of this State.

Section 8.03. Municipal Home Rule.

(a) Except as provided elsewhere in this Section, the State legislature shall not pass any law relating to the incorporation, organization, government or affairs of municipal corporations in this State which will be special or local in its terms or in its effect, but the State legislature shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in (b) of this section.

(b) The State legislature shall classify all such municipal corporations by grouping them into not more than four classes based on population as determined by the most recent census made under the authority of the United States or the State of Maryland. No more than one such grouping of municipal corporations into four (or fewer) classes shall be in effect at any time, and the enactment of any such grouping of municipal corporations into four (or fewer) classes shall repeal any such grouping of municipal corporations into four (or fewer) classes then in effect. Municipal corporations shall be classified only as provided in this section and not otherwise.

(c) The adoption of a new charter, the amendment of any charter or local laws, or the repeal of any part of a charter or local laws shall be proposed either by a resolution of the legislative body of any such municipal corporation or by a petition containing the signatures of at least five per cent of the registered voters of a municipal corporation and filed with the legislative body of said municipal corporation.

(d) All charter provisions, or amendments thereto, adopted under the provisions of this article, shall be subject to all applicable laws enacted by the General Assembly; except that any local laws, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation and enacted before this article becomes effective, shall be subject to any charter provisions of this article. Any local law, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation and in effect at the time this article becomes effective, shall be subject to any applicable state law enacted after this article becomes effective. All laws enacted by the General Assembly and in effect at the time this article becomes effective, shall remain in effect until amended or repealed in accordance with the provisions of this Constitution.

Section 8.04. Home Rule for Code Counties.

(a) For the purposes of this article, (1) "code county" means a county which is not a charter county under Article 11A of this Constitution and has adopted the optional powers of home rule provided under this article; and (2) "public local law" means a law applicable to the incorporation, organization, or government of a code county and contained in the county's code of public local laws; but this latter term specifically does not include (i) the charters of municipal corporations under Article 11E of this Constitution, (ii) the laws or charters of counties under Article 11A of this Constitution, (iii) laws, whether or not Statewide in application, in the code of public general laws, (iv) laws which apply to more than one county, and (v) ordinances and resolutions of the county government enacted under public local laws.

(b) The governing body of any county, by a majority vote of the members elected thereto, may propose by resolution that the county become a code county and be governed by the provisions of this article. Upon the adoption of such a resolution, it shall be certified to the Board of Supervisors of Elections in the county, which board (pursuant to the election laws of the State) shall submit to the voters of the county at the next ensuing general election the question whether the resolution shall be approved or rejected. If in the referendum a majority of those persons voting on this question vote for the resolution, the resolution is approved, and the county shall become a code county under the provisions of this article, on the thirtieth day after the election. If in the referendum a majority of those persons voting on this question vote against the resolution, the resolution is rejected, and of no further effect.

Provided that if at the next ensuing general election there shall be submitted to the voters of the county a proposed charter under Article 11A of this Constitution, the proposed charter only shall be submitted to the voters at that next ensuing general election. If the proposed charter is adopted by the voters, this particular resolution to become a code county shall not be submitted to the voters and shall have no further effect. If the proposed charter is rejected by the voters, the code question under this article shall be submitted to the voters at the general election two years later, and no charter question under Article 11A shall be submitted to the voters at that general election.

(c) Except as otherwise provided in this article, a code county may enact, amend, or repeal a public local law of that county, following the procedure in this article.

(d) Except as otherwise provided in this article, the General Assembly shall not enact, amend, or repeal a public local law which is special or local in its terms or effect within a code county. The General Assembly may enact, amend, or repeal public local laws applicable to code counties only by general enactments which in term and effect apply alike to all code counties in one or more of the classes provided for in Section 5 of this article.

(e) The General Assembly, by law, shall classify all code counties by grouping them into not more than four classes based either upon population as determined in the most recent federal or state census or upon such other criteria as determined by the General Assembly to be appropriate. Not more than one such grouping of code counties into four (or fewer) classes may be in effect at any one time, and the enactment of any grouping of code counties into four (or fewer) classes repeals any other such grouping then in effect. Code counties may be classified only as provided in this section.

(f) A code county may enact, amend, or repeal a public local law of that county by a resolution of the board of county commissioners. The General Assembly may amplify the provisions of this section by general law in any manner not inconsistent with this article.

(g) Any action of a code county in the enactment, amendment, or repeal of a public local law is subject to a referendum of the voters in the county, as in this section provided. The enactment, amendment, or repeal shall be effective unless a petition of the registered voters of the county requires that it be submitted to a

referendum of the voters in the county. The General Assembly shall amplify the provisions of this section by general law in any manner not inconsistent with this article, except that in any event the number of signatures required on such a petition shall not be fewer than five percentum (5%) of the voters in a county registered for county and state elections.

Section 8.05. Mandatory Home Rule for Counties. For each county which has (1) not become a code county, (2) not adopted a constitutional home rule charter, (3) not begun writing a charter under the existing laws as of the date of the adoption of this Constitution, said county will either (1) become a code county or (2) write a proposed home rule charter by whatever means the existing county governing body specifies. If the county governing body elects to write a proposed home rule charter, said charter must be presented to the people of the county by ballot for their approval at the first general election following the adoption of this Constitution. Said county charter shall become effective if approved by a majority vote of the qualified voters voting thereon. However, if the proposed charter be rejected by the voters, or if a charter proposed by a charter board under the existing laws be rejected, said county shall automatically, within 30 days following the first general election after the adoption of this Constitution, become a code county.

DISCUSSION OF FIRST ALTERNATIVE ARTICLE

Extensive research on the part of the Committee into the question of local government powers in Maryland produced two significant conclusions:

1. One of the strengths of the Maryland system of local government is the great variety between the political subdivisions both in terms of government structure and in terms of home rule powers enjoyed.

2. The Maryland Constitution has provided for classification under home rule powers in certain cases but the state legislature has declined in all cases to date to use these classification powers.

Basically, local governments in Maryland fall into three different categories where home rule powers are concerned. A fourth category will be added if Code Home Rule for counties is approved by the voters at the next general election. The types of home rule currently found in Maryland are itemized below:

1. Non-Home Rule Counties. This is probably Maryland's most unique political institution. There are virtually no prohibitions against control by the state legislature of non-home rule counties. The Maryland legislature can pass local legislation for non-home rule counties at will and, in fact, the county delegation to the state legislature tends to sit as an ad hoc county council for the county in most cases.

2. Local Home Rule Counties and Baltimore City. This is the one area of the Maryland Constitution where there are prohibitions against the legislature passing local legislation for individual counties. Although the Constitution grants the state legislature the power to decide what the powers of the local home rule counties will be, the state legislature is required to treat all of these counties as a group. It may not pick out a single home rule county and pass legislation for it alone. The basic powers of the

local home rule counties and Baltimore City are provided in the Express Powers Act which was enacted by the General Assembly (Article 25A of the Annotated Code of Maryland).

The Constitution does provide one safety valve for the General Assembly where passing general legislation for the home rule counties is concerned. Article 11A, Section 4, provides that any law applying to two or more of the geographical subdivisions of the State shall not be considered a local law but will be considered general legislation. In effect this provision means that the legislature can pass local legislation for a home rule county only if that legislation applies to at least two of the home rule units of government in the State.

3. Home Rule Municipalities. Under the terms of the municipal home rule amendment to the Constitution of Maryland on November 2, 1954, the power to create new municipalities has been taken out of the legislature and left to local initiative. In order to incorporate a municipality under this amendment, however, the city involved must have the permission of the county in which it resides. Needless to say, this provision has very effectively resulted in no new municipalities being incorporated in Maryland since 1954, because gaining permission of the county has proved virtually impossible.

As for the home rule powers of municipalities, the Constitution provides for classification and, therefore, treatment of the municipalities by the General Assembly only in terms of general law. In 1955, however, the legislature established by statute that "there is one class of municipal corporation" and has ever since treated

all the municipalities of Maryland as a single group by general law. Thus here we have established the precedent that the Maryland Constitution provides for classification but the state legislature has consistently refused to take advantage of these provisions for classification.

4. Home Rule for Code Counties. If the Code Home Rule Amendment to the Constitution is adopted in November, there will be a fourth type of local government in Maryland which will basically be similar to the home rule for municipalities. The Code Home Rule Amendment provides for the legislature to establish the home rule powers of the code counties. The Constitution further provides the legislature the right of classification of the code counties into no more than four groups. The key question, of course, is whether the state legislature will classify the code counties or will act as it did in the case of municipalities and create only one classification of code counties. The expectation would be that the legislature would follow the pattern established with municipalities and treat the code counties as a single group.

Conclusions. The major conclusion to be drawn from this is that there is no single system of local government or home rule powers in the State of Maryland. It is quite obvious that the State legislature has tackled the problem of home rule on a piece-by-piece basis and has created a system of local governments with a great deal of variety and free choice. What has occurred is that each local area is entitled to choose that form of government which particularly suits it and is not forced to adopt one statewide form of local government. A good argument can be made in favor of

retaining this present system, mainly because it does provide such a great variety of choices to the individual subdivisions.

A second conclusion to be drawn is that classification is very much a part of the Maryland constitutional pattern but has had no role whatsoever in Maryland local government in practice. This custom of not taking advantage of classification is one which it might be worthwhile to continue in the new Constitution.

In view of these conclusions, the Committee recommends in its First Alternative Article that constitutional language be adopted which will preserve the present basic structure of Maryland local government. Such language will preserve the present diversity of Maryland local government, which the Committee believes is good, and will leave each local subdivision a wide variety of choices in terms of organizing itself to meet its particular needs. The first alternative article also will cause little re-evaluation or reorganization of Maryland local government as it is presently constituted, except that it will do away with non-home rule counties and require them to become either charter counties or code counties.

SECTION-BY-SECTION ANALYSIS OF FIRST ALTERNATIVE ARTICLE

Section 8.01. Organization of Local Government.

The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries, including provisions:

(1) For optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

(2) Self-Executing Home Rule Powers. For the adoption or amendment of charters by any county or Baltimore City, in accordance with the provisions of section 8.02 concerning home rule for local units.

This section places the ultimate responsibility for determining Maryland local government in the future in the state legislature. Thus any major modifications in local government can be undertaken by the state legislature alone rather than requiring a constitutional amendment.

This section also gives the state legislature the power to draw up sample county and city charters which may be adopted by the local subdivisions if they wish. Making available such sample charters will save many subdivisions the trouble of going through the somewhat difficult process of electing a charter board.

The only constitutional limit placed on the legislature by this article is (2) which places the right of counties and cities to adopt charters or become code counties in the constitution rather than the state legislature.

Section 8.02. Home Rule for Charter Counties and Baltimore City.

(a) On demand of the executive and legislative authority of any county or the City of Baltimore,

or on petition bearing the signatures of 10 per cent of the qualified voters (provided that in any case 10,000 signatures shall be sufficient to complete a petition), the officer or agency responsible for certifying public questions shall provide at the next general election for the election of a charter board of five registered voters from said county or city. Nominations for members for said charter board may be made not less than forty days prior to said election by the executive and legislative authority of said county or city, or not less than twenty days prior to said election by petition bearing the signatures of 5 per cent of the qualified voters (provided that in any case 2,000 signatures shall be sufficient to complete a nominating petition).

(b) At said election the ballot shall contain the names of said nominees and shall be so arranged as to permit the voter to vote for or against the creation of the charter board. If the majority of the votes cast for and against the creation of said charter board shall be against said creation, the election of the members of such charter board shall be void, but if such majority shall be in favor of the creation of said charter board, then the five nominees receiving the largest number of votes shall constitute the charter board.

(c) Any proposed charter or charter amendments shall be published by the charter board, distributed

to the qualified voters and submitted to them at the next general election not less than thirty days after publication. The executive and legislative authority of the county or city shall, on request of the charter board, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution, and submission of its proposals.

(d) A charter or charter amendments shall become effective if approved by a majority vote of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local executive and legislative authority. The charter shall become the law of said county or city, subject only to the Constitution and public general laws of this State, and any public local laws inconsistent with the provisions of said charter and any former charter of said county or city shall be thereby repealed.

(e) The state legislature shall by public general law provide a grant of express powers for such counties or city as may form a charter under the provisions of this article. Such express powers shall not be enlarged or extended by any charter formed under the provisions of this article, but such powers may be extended, modified, amended or repealed by the General Assembly.

(f) From and after the adoption of a charter by the City of Baltimore or any county of this State, no public local law shall be enacted by the state legislature for said city or county on any subject covered by the express powers granted as above provided. Any law so drawn as to apply to two or more of the geographical subdivisions of this State shall not be deemed a local law. The term "geographical subdivision" herein used shall be taken to mean the City of Baltimore or any of the counties of this State.

This is the language of the present Constitution concerning home rule for charter counties and Baltimore City. Leaving this language in the constitution guarantees local governments the right to form charter governments and thus remove themselves to a certain degree from the control of the state legislature.

Paragraph (e) of this section maintains in power the present Express Powers Act (Article 25A of the Maryland Code) granting various home rule powers to the charter counties and Baltimore City. The Committee favors retaining the present Express Powers Act because most of the charter subdivisions appear to be satisfied with it and have been able to work well under it.

Section 8.03. Municipal Home Rule.

(a) Except as provided elsewhere in this section, the state legislature shall not pass any law relating to the incorporation, organization, government or affairs of municipal corporations in this State which

will be special or local in its terms or in its effect, but the state legislature shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in (b) of this section.

(b) The state legislature shall classify all such municipal corporations by grouping them into not more than four classes based on population as determined by the most recent census made under the authority of the United States or the State of Maryland. No more than one such grouping of municipal corporations into four (or fewer) classes shall be in effect at any time, and the enactment of any such grouping of municipal corporations into four (or fewer) classes shall repeal any such grouping of municipal corporations into four (or fewer) classes then in effect. Municipal corporations shall be classified only as provided in this section and not otherwise.

(c) The adoption of a new charter, the amendment of any charter or local laws, or the repeal of any part of a charter or local laws shall be proposed either by a resolution of the legislative body of any such municipal corporation or by a petition containing the signatures of at least five per cent of the registered voters of a municipal corporation and

filed with the legislative body of said municipal corporation.

(d) All charter provisions, or amendments thereto, adopted under the provisions of this article, shall be subject to all applicable laws enacted by the General Assembly; except that any local laws, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation and enacted before this article becomes effective, shall be subject to any charter provisions of this article. Any local law, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation and in effect at the time this article becomes effective, shall be subject to any applicable state law enacted after this article becomes effective. All laws enacted by the General Assembly and in effect at the time this article becomes effective, shall remain in effect until amended or repealed in accordance with the provisions of this Constitution.

This is the language of the present Constitution concerning home rule for municipalities. Leaving this language in the constitution guarantees the municipalities the right to adopt charter governments without having to first get the approval of the state legislature. In fact, this constitutional language has received national attention and praise because it leaves the municipalities such a wide range of choices and such great freedom of action in organizing their local governments.

It should be noted that this language provides for classification of the municipalities, but the state legislature has declined to date to classify and has treated the municipalities as a single group.

Section 8.04. Home Rule for Code Counties.

(a) For the purposes of this article, (1) "code county" means a county which is not a charter county under Article 11A of this Constitution and has adopted the optional powers of home rule provided under this Article; and (2) "public local law" means a law applicable to the incorporation, organization, or government of a code county and contained in the county's code of public local laws; but this latter term specifically does not include (i) the charters of municipal corporations under Article 11E of this Constitution, (ii) the laws or charters of counties under Article 11A of this Constitution, (iii) laws, whether or not statewide in application, in the code of public general laws, (iv) laws which apply to more than one county, and (v) ordinances and resolutions of the county government enacted under public local laws.

(b) The governing body of any county, by a majority vote of the members elected thereto, may propose by resolution that the county become a code county and be governed by the provisions of this article. Upon the adoption of such a resolution, it shall be certified to the Board of Supervisors of Elections in the county,

which Board (pursuant to the election laws of the State) shall submit to the voters of the county at the next ensuing general election the question whether the resolution shall be approved or rejected. If in the referendum a majority of those persons voting on this question vote for the resolution, the resolution is approved, and the county shall become a code county under the provisions of this article, on the thirtieth day after the election. If in the referendum a majority of those persons voting on this question vote against the resolution, the resolution is rejected, and of no further effect.

Provided that if at the next ensuing general election there shall be submitted to the voters of the county a proposed charter under Article 11A of this Constitution, the proposed charter only shall be submitted to the voters at that next ensuing general election. If the proposed charter is adopted by the voters, this particular resolution to become a code county shall not be submitted to the voters and shall have no further effect. If the proposed charter is rejected by the voters, the code question under this article shall be submitted to the voters at the general election two years later, and no charter question under Article 11A shall be submitted to the voters at that general election.

(c) Except as otherwise provided in this article, a code county may enact, amend, or repeal a public

local law of that county, following the procedure in this article.

(d) Except as otherwise provided in this article, the General Assembly shall not enact, amend, or repeal a public local law which is special or local in its terms or effect within a code county. The General Assembly may enact, amend, or repeal public local laws applicable to code counties only by general enactments which in term and effect apply alike to all code counties in one or more of the classes provided for in Section 5 of this article.

(e) The General Assembly, by law, shall classify all code counties by grouping them into not more than four classes based either upon population as determined in the most recent federal or state census or upon such other criteria as determined by the General Assembly to be appropriate. Not more than one such grouping of code counties into four (or fewer) classes may be in effect at any one time, and the enactment of any grouping of code counties into four (or fewer) classes repeals any other such grouping then in effect. Code counties may be classified only as provided in this section.

(f) A code county may enact, amend, or repeal a public local law of that county by a resolution of the board of county commissioners. The General Assembly may amplify the provisions of this section by general law in any manner not inconsistent with this article.

(g) Any action of a code county in the enactment, amendment, or repeal of a public local law is subject to a referendum of the voters in the county, as in this section provided. The enactment, amendment, or repeal shall be effective unless a petition of the registered voters of the county requires that it be submitted to a referendum of the voters in the county. The General Assembly shall amplify the provisions of this section by general law in any manner not inconsistent with this article, except that in any event the number of signatures required on such a petition shall not be fewer than five percentum (5%) of the voters in a county registered for county and state elections.

This is the language from the present Constitution establishing code counties which must be approved by the voters of Maryland at the general election in 1966. Essentially this language permits the present County Commissioners to adopt a number of home rule powers for their counties by electing for their counties to become code counties.

It should be noted that the state legislature will have the power to classify code counties, much as it has the constitutional power to classify municipalities. The Committee feels this is the correct approach, for in essence this leaves the decision as to whether or not to classify the code counties in the state legislature.

Section 8.05. Mandatory Home Rule for Counties.

For each county which has (1) not become a code county, (2) not adopted a constitutional home rule charter, (3) not begun writing a charter under the existing laws as of the date of the adoption of this Constitution, said county will either (1) become a code county or (2) write a proposed home rule charter by whatever means the existing county governing body specifies. If the county governing body elects to write a proposed home rule charter, said charter must be presented to the people of the county by ballot for their approval at the first general election following the adoption of this Constitution. Said county charter shall become effective if approved by a majority vote of the qualified voters voting thereon. However, if the proposed charter be rejected by the voters, or if a charter proposed by a charter board under the existing laws be rejected, said county shall automatically, within 30 days following the first general election after the adoption of this Constitution, become a code county.

This provision requires every county in the State of Maryland to adopt some form of home rule powers, either by adopting a charter or becoming a code county. In order to provide the greatest amount of choice and flexibility, this provision allows the present county commissioners to propose a charter, if they so desire, rather

than requiring the formation of a separate charter board. Those counties which do not wish to have a charter can simply gain home rule powers by becoming code counties.

The Committee favors mandatory home rule for cities and counties for several reasons. Every year the state legislature is tied up for a good percentage of its seventy-day session passing purely local legislation, a problem that would be removed by mandatory home rule. There also is the problem that non-home rule counties and cities are often subject to state dictation as a result of their local legislation having to be enacted by the entire legislature. The Committee feels that mandatory home rule will center power in fewer hands and make the lines of responsibility in local government clearer. Mandatory home rule would also secure equal status for each local unit in the Maryland government.

Because there is some question as to whether all rural counties are equipped to handle full home rule powers, the Committee recommends that some form of aid should be provided to rural counties by the State government. The Committee recommends the establishment of a Department of Local Government Affairs similar to that now existing in the Commonwealth of Pennsylvania to help non-home rule counties to smoothly make the transition to effective home rule.

Second Alternative Article

Section 11.01. Organization of Local Government. The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving

such civil divisions and of altering their boundaries, including provisions:

(1) For such classification of civil divisions as may be necessary, on the basis of population or on any other reasonable basis related to the purpose of the classification;

(2) For optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

(3) For the adoption or amendment of charters by any county or city, in accordance with the provisions of Section 11.02 concerning home rule for local units.

Section 11.02. Home Rule for Local Units.

(a) Any county or city may adopt or amend a charter for its own government, subject to such regulations as are provided in this Constitution and may be provided by general law. The legislature shall provide one or more optional procedures for nonpartisan election of five charter commissioners and for framing, publishing and adopting a charter or charter amendments.

(b) Upon resolution approved by a majority of the members of the legislative authority of the county or city or upon petition of ten per cent of the qualified voters (provided, however, that in any case 10,000 signatures will be sufficient to complete a petition), the officer or agency responsible for certifying public questions shall submit to the people at the next general election not less than sixty days thereafter, or at a special election if authorized by law, the question: "Shall a commission be chosen to

frame a charter or charter amendments for the county (or city) of _____?" An affirmative vote of a majority of the qualified voters voting on the question shall authorize the creation of the commission.

(c) A petition to have a charter commission may include the names of five commissioners, to be listed at the end of the question when it is voted on, so that an affirmative vote on the question is a vote to elect the persons named in the petition. Otherwise, the petition or resolution shall designate an optional election procedure provided by law.

(d) Any proposed charter or charter amendments shall be published by the commission, distributed to the qualified voters and submitted to them at the next general or special election not less than thirty days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

(e) A charter or charter amendments shall become effective if approved by a majority vote of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendment by petition or by resolution of the local legislative authority.

Section 11.03. Powers of Counties and Cities. A county or city may exercise any legislative power or perform any function

which is not denied to it by its charter, is not denied to counties or cities generally, or to counties or cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony.

Section 11.04. Mandatory Home Rule for Counties. For each county which has (1) not become a code county, (2) not adopted a constitutional home rule charter, (3) not begun writing a charter under the existing laws as of the date of the adoption of this Constitution, said county will either (1) become a code county or (2) write a proposed home rule charter by whatever means the existing county governing body specifies. If the county governing body elects to write a proposed home rule charter, said charter must be presented to the people of the county by ballot for their approval at the first general election following the adoption of this Constitution. Said county charter shall become effective if approved by a majority vote of the qualified voters voting thereon. However, if the proposed charter be rejected by

the voters, or if a charter proposed by a charter board under the existing laws be rejected, said county shall automatically, within 30 days following the first general election after the adoption of this Constitution, become a code county.

DISCUSSION OF SECOND ALTERNATIVE ARTICLE.

The Committee on Political Subdivisions and Local Legislation recommends a second alternative Local Government Article which is quite different from the first alternative. This second alternative article is much shorter than the first alternative and much more revolutionary in outlook and goals. The essential difference between the two articles has to do with the treatment of the home rule powers of the subdivisions. Whereas the first alternative article leaves the determination of the home rule powers to the state legislature through a grant of express powers, the second alternative article gives the home rule subdivisions an unlimited grant of power which can be limited by the state legislature only through general legislation based on classification.

Thus the second alternative article proposed by the Committee contains the following basic provisions:

1. That the basic power for determining the types and powers of local subdivisions will rest with the state legislature.

2. That the home rule counties and cities can exercise any power not specifically denied to them by general law, the home rule charter, or the state Constitution.

3. That the General Assembly be given the power to classify counties and cities for general purpose legislation.

4. That all 23 counties of Maryland will be required to adopt a home rule form of government, although this will not necessarily have to be in the form of a charter government.

The Committee recommends that the state legislature be given broad powers for determining the types of local government for the simple reason that this will provide the greatest flexibility in adapting local government to the needs of the future. It will also free local governments of having to seek a constitutional amendment every time they wish to alter their basic structure or acquire new powers. There is general agreement among scholars working in this field that jurisdiction over local government should rest with the state legislature and not in the Constitution.

The Committee has several reasons for recommending a broad grant of power to the home rule counties and cities. Such a broad grant of power will set the home rule localities free to solve any problem they wish unless the state legislature specifically denies them the power to solve that problem. This will free the home rule localities from having to seek permission of the state legislature before they can move into a new area of governmental endeavor. It will thus stimulate initiative in solving problems at the local level.

It also will free the home rule localities from being hemmed in by the dead hand of a state legislature that refuses to act.

This broad grant of home rule powers, in effect, gives all residual powers of government to the home rule localities, much as individual states receive all residual powers under the United States Constitution. At the same time, however, this approach leaves the state legislature free (through its power of withdrawal) to solve on a statewide and regional basis those problems which have outgrown the individual subdivisions.

Hand in hand with this broad grant of home rule powers, however, the Committee recommends that the state legislature be given the power to classify home rule counties and cities when withdrawing powers through general legislation. This is necessary to give the state legislature jurisdiction over subdivisions which might, under the broad grant of home rule powers, start engaging in practices that are detrimental to the State as a whole. Through the power of classification, the state legislature would be able to limit such detrimental activities without having to pass statewide legislation.

What the Committee is attempting to do here is to free both the home rule governments and the state legislature to solve the problems of the people of Maryland. The home rule subdivisions will have the freedom of a broad grant of power, but the state legislature will have the freedom to easily remove these powers, when necessary, through the power of classification.

It should be noted that the immediate effect of the broad grant of home rule power will be to create a State in which all powers rest with the political subdivisions. The state legislature

at its initial meeting following the adoption of the new constitution will then begin withdrawing those powers, through general laws based on classification, which it considers of statewide concern. In the process of withdrawing such powers, the state legislature will in effect be redefining the entire pattern of state-local relationships in the State of Maryland. It would be hoped by the Committee that the state legislature would rationalize the present complicated structure of state-local relationships when embarking on this major redefinition of powers.

The Committee recommends that all 23 counties of Maryland be required to have a home rule form of government for the reason that this will free the state legislature of the task of enacting local legislation for the non-home rule counties. It would be hoped that, freed of the burden of local legislation, the state legislature could concentrate its full time on solving statewide problems at the statewide level.

The Committee feels the state legislature should have the major say in determining how each subdivision will go about assuming home rule powers. The Committee would recommend that the legislature provide several paths to home rule for the counties, including adoption of a home rule charter recommended by a charter commission, adoption of a home rule charter submitted by the present county government, adoption of a model home rule charter recommended by the state legislature, or simply a grant of home rule powers to the existing county governments (code home rule).

SECTION-BY-SECTION ANALYSIS OF THE SECOND ALTERNATIVE ARTICLE.

Section 11.01. Organization of Local Government.

The legislature shall provide by general law for the

government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries, including provisions:

(1) For such classification of civil divisions as may be necessary, on the basis of population or on any other reasonable basis related to the purpose of the classification;

(2) For optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

(3) For the adoption or amendment of charters by any county or city, in accordance with the provisions of Section 11.02 concerning home rule for local units.

This section puts the major responsibility for organizing local government in Maryland in the state legislature. It specifically provides for classification of local subdivisions for purposes of general laws enacted by the state legislature. This question of classification will be discussed in greater detail in the analysis of Section 11.03.

This section also provides for the state legislature to propose optional charters to be adopted by counties and cities. Such

optional charters will permit counties and cities to adopt charter governments without having to go through the lengthy procedures involved in forming a charter board.

The only limitation placed upon the state legislature by this section is paragraph (3), which provides for self-enforcing home rule charters as detailed in Section 11.02.

Section 11.02. Home Rule for Local Units.

(a) Any county or city may adopt or amend a charter for its own government, subject to such regulations as are provided in this Constitution and may be provided by general law. The legislature shall provide one or more optional procedures for nonpartisan election of five charter commissioners and for framing, publishing and adopting a charter or charter amendments.

(b) Upon resolution approved by a majority of the members of the legislative authority of the county or city or upon petition of ten per cent of the qualified voters (provided, however, that in any case 10,000 signatures will be sufficient to complete a petition), the officer or agency responsible for certifying public questions shall submit to the people at the next general election not less than sixty days thereafter, or at a special election if authorized by law, the question: "Shall a commission be chosen to frame a charter or charter amendments for the county (or city) of _____?"

An affirmative vote of a majority of the qualified voters voting on the question shall authorize the creation of the commission.

(c) A petition to have a charter commission may include the names of five commissioners, to be listed at the end of the question when it is voted on, so that an affirmative vote on the question is a vote to elect the persons named in the petition. Otherwise, the petition or resolution shall designate an optional election procedure provided by law.

(d) Any proposed charter or charter amendments shall be published by the commission, distributed to the qualified voters and submitted to them at the next general or special election not less than thirty days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

(e) A charter or charter amendments shall become effective if approved by a majority vote of the qualified voters voting thereon. A charter may

provide for direct submission of future charter revisions or amendment by petition or by resolution of the local legislative authority.

This section provides in the constitution the procedure by which a county or city may adopt a home rule charter for its local government. This language is similar to that found in the present Constitution of Maryland, but has been somewhat shortened and streamlined. The purpose of putting self-enforcing home rule language in the constitution is to prevent the state legislature from interfering with the right of local governments to adopt home rule charters.

Section 11.03. Powers of Counties and Cities.

A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties or cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony.

In this section (the key section of the second alternative article), the language provides that home rule counties and cities

can exercise any power not specifically denied to them by general law, the home rule charter, or the state Constitution.

This broad grant of power endows home rule localities, through the Constitution, with all the lawmaking power of the state legislature but permits the legislature to deny localities any power by general act. This provision thus sets the home rule localities free to solve any problem they wish unless the state legislature specifically denies them the power to solve that problem through general legislation. Thus the presumption in judicial interpretation would be that the locality has the power to act unless it has been specifically denied.

The principal merit of this plan is that it frees the home rule localities from having to seek permission of the state legislature before they can move into a new area of governmental endeavor. It thus stimulates initiative in solving problems at the local level. It also frees the home rule localities from being hemmed in by the dead hand of a state legislature that refuses to act.

The presumption under this plan is that the home rule localities will be protected from undue interference by the state legislature by the fact that any withdrawal of power will have to be by general legislation. Thus, to withdraw power from a particular local subdivision, the state legislature would be required to withdraw power from all the local subdivisions in the same classification group simultaneously. The assumption is that such a withdrawal of power from all the subdivisions in a particular classification would be very difficult to achieve unless it had the support of a majority of the subdivisions and a majority of the voters in the subdivisions.

This broad grant of home rule powers, in effect, gives all residual powers of government to the home rule localities, much as individual states receive all residual powers under the United States Constitution. At the same time, however, this approach leaves the state legislature free (through its power of withdrawal) to solve on a statewide and regional basis those problems which have outgrown the boundaries of a particular subdivision or group of subdivisions. The goal here is to unshackle the home rule localities from domination by the state legislature, but at the same time not to shackle the ability of the state legislature to grapple with statewide problems and regional problems.

This plan is a radical departure from the method by which home rule powers are handled under the present Maryland Constitution. Article XI (City of Baltimore) and Article XI A (Local Legislation) specifically give jurisdiction over the determination of home rule powers to the state legislature. In fact, under the present Constitution, the state legislature reserves the power to abolish all home rule powers if it so desires.

The effect of these two constitutional provisions has been to shackle the home rule governments in Maryland, forcing them to get a specific grant of power from the state legislature before they could attempt to solve new and unusual problems. It has also left the home rule localities completely at the mercy of "ripper" bills passed in the state legislature which take powers away from the home rule governments and vest them in the local delegation to the state legislature. Adoption of a broad grant of home rule powers would help to ameliorate both of these problems in Maryland local government.

Hand in hand with this broad grant of power to the subdivisions, however, the second alternative article provides that classification powers be granted to the state legislature when dealing with local subdivisions in terms of general law (such classification powers are provided in Section 11.01).

Classification by the state legislature is required because, under the broad grant of power, if a subdivision should start engaging in practices that are detrimental to the State as a whole, the state legislature would have to pass laws applying to the entire State in order to bring this one subdivision under control. The Committee feels there would be little likelihood of such statewide legislation being enacted simply to bring one subdivision under adequate statewide control.

Therefore, in order to give the General Assembly a measure of control over the subdivisions, the Committee recommends that the General Assembly be permitted to classify the subdivision into groups for purposes of general legislation. A general law thus would become any law that applied to two or more subdivisions. In fact, in view of the pattern of decisions before the Maryland Court of Appeals on the question of general legislation, it appears that a general law can be one that affects only one subdivision provided the problems of that subdivision are of statewide importance.

What the Committee is trying to do here is to free both the home rule governments and the state legislature to solve the problems of the people of Maryland. Under the broad grant of home rule powers, the local subdivision is given freedom to do everything it can to solve its own problems. On the other hand, the power of

classification gives the General Assembly the power to reach down and take over the problems of that particular subdivision, or a group of subdivisions, when they become a statewide concern. Thus the effect of the broad grant of home rule power, coupled with the power of classification in the state legislature, unshackles the local government but, at the same time, leaves the state legislature a high measure of control over all the local subdivisions of the State of Maryland.

Section 11.04. Mandatory Home Rule for Counties.

For each county which has (1) not become a code county, (2) not adopted a constitutional home rule charter, (3) not begun writing a charter under the existing laws as of the date of the adoption of this Constitution, said county will either (1) become a code county or (2) write a proposed home rule charter by whatever means the existing county governing body specifies. If the county governing body elects to write a proposed home rule charter, said charter must be presented to the people of the county by ballot for their approval at the first general election following the adoption of this Constitution. Said county charter shall become effective if approved by a majority vote of the qualified voters voting thereon. However, if the proposed charter be rejected by the voters, or if a charter proposed by a charter board under the existing laws be rejected, said county

shall automatically, within 30 days following the first general election after the adoption of this Constitution, become a code county.

This section is exactly similar to Section 8.05 of the first alternative article in that it requires every county in Maryland to adopt some form of a home rule government, although not necessarily a charter government. The same arguments used for this provision in the first alternative article bear upon its inclusion in the second alternative article.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

CONSTITUTIONAL CONVENTION COMMISSION

FIFTH REPORT

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

Maryland Room
University of Maryland Library
College Park, Md

August 21, 1966

RE: ARTICLE XI. LOCAL GOVERNMENT AND
ARTICLE XII. INTERGOVERNMENTAL
RELATIONS.

The Committee on Political Subdivisions and Local Legislation recommends the following Articles on Local Government and Intergovernmental Relations to the Constitutional Convention Commission for consideration.

ARTICLE XI. LOCAL GOVERNMENT

Section 11.01. Organization of Local Government.

(a) *For the purposes of this Article, Baltimore City shall be considered a county.*

(b) *The General Assembly shall provide by law for the government of counties, cities and other civil divisions, and for methods and procedures of creating, incorporating, merging, consolidating, changing, and dissolving civil divisions and altering their boundaries. No new county shall be created without the consent*

of a majority of the votes cast by the qualified voters residing within the area of the proposed county. The lines of no county shall be changed without the consent of a majority of the votes cast by the qualified voters residing within the area proposed to be transferred from one county to another. If the General Assembly wishes to change the lines of more than three existing counties, this proposal shall require the consent of a majority of the votes cast by the qualified voters of the State rather than of the voters residing within the areas proposed to be transferred from one county to another.

(c) The General Assembly may provide, notwithstanding any other provisions of this Article, for the creation of intergovernmental authorities, on its own initiative or on the request of one or more political subdivisions, to administer single- or multiple-purpose functions or services which transcend local boundaries and are not soluble through interlocal cooperation. The General Assembly may grant these authorities power to tax and collect revenue.

(d) Any county, city or other civil division may agree, except as limited by general law, to cooperate with any one or more other governments or civil divisions in the administration of their functions and powers, and to share the costs and responsibilities of these joint functions and services.

Section 11.02. Powers of County Governments.

(a) A county may exercise any legislative power or perform any function which is not denied to it by its charter, to counties generally, or to counties of its class, and is within the limitations the General Assembly may establish by general law. This grant of home rule powers shall not include power to enact private or civil law

except as incident to an exercise of an independent county power, nor shall it include power to define and provide for the punishment of a felony.

(b) The General Assembly shall legislate for counties only by general laws which shall in their terms and in their effect apply alike to all counties. No county shall exempt itself from any general law; provided, however, that the General Assembly may provide by general law for the establishment of classes of counties by grouping them into not more than five classes with not less than three counties in any one class. The General Assembly may then pass laws applicable to all counties within a class. The establishment of classes shall be based either upon population as determined in the most recent United States Government census or upon such other criteria as are determined by the General Assembly to be appropriate. No more than one grouping of counties into five or fewer classes shall be in effect at any time; the enactment of any grouping shall repeal any other grouping then in effect.

Section 11.03. Structure of County Governments.

(a) A county shall provide for the structure of its government by any one of the following procedures:

(1) The General Assembly shall provide for optional plans of organization and structure so as to enable a county to adopt or abandon an optional form of local government by a majority vote of the qualified voters voting thereon.

(2) On the request of the executive and legislative authority of any county, or on a petition bearing the signatures of ten per cent of the qualified voters (provided that in any case 10,000 signatures shall be sufficient to complete a petition), the officer or agency responsible for certifying public questions shall provide at the next general election for the election of a charter board of five registered voters from that county. Nominations for members of the charter board may be made not less than 40 days prior to the election by the executive and legislative authority of the county, or not less than 20 days prior to the election by a petition bearing the signatures of five per cent of the qualified voters (provided that in any case 2,000 signatures shall be sufficient to complete a nominating petition).

At the election the ballot shall contain names of the nominees and shall be so arranged as to permit voters to vote for or against the creation of a charter board. If the majority of the votes cast on the proposal to create a charter board is against the proposal, the election of members of the charter board shall be void. If the majority is in favor of the creation of a charter board, then the five nominees receiving the largest number of votes shall constitute the charter board.

Any proposed charter or charter amendments shall be published by the charter board, made available to the qualified voters, and submitted to them at the first general election more than 30 days after publication. The executive and legislative authority of the county shall, on request of the charter board, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution, and submission of its proposals.

A charter or charter amendments shall become effective if approved by a majority of the votes cast by qualified voters. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local executive and legislative authority. On its adoption the charter shall become the law of the county, subject only to the Constitution and public general laws of this State, and any public local laws inconsistent with its provisions and any former charter shall be thereby repealed.

(3) The governing body of any non-charter county, by a majority vote of its elected members, may propose by resolution that the county become a charter county and that an initial charter be prepared by the means it specifies. Upon the completion of a proposed charter, it shall be published, made available to the qualified voters and submitted to them at the first general election more than 30 days after publication. The charter shall become effective if approved by a majority of the votes cast by qualified voters. If adopted, it will be subject to the same constitutional limitations and privileges as those charters first submitted by a charter board.

However, if at a general election there shall be submitted to the voters of the county a proposed charter drawn by a charter board, only that charter shall be submitted. If the charter board proposed charter is adopted by the voters, any charter drawn by a means specified by the county governing body shall not be submitted to the voters and shall have no further effect. If a charter drawn by the charter board is rejected by the voters, the charter drawn by a means specified by the county governing body shall be submitted to the voters at the general election two years later, and no other charter shall be submitted at that election.

Section 11.04. City Governments.

(a) For the purposes of this section, the term "municipal corporation" shall not include Baltimore City or any of the other counties of the State.

(b) Except as provided elsewhere in this section, the General Assembly shall not pass any law relating to the incorporation, organization, government or affairs of municipal corporations in this State which will be special or local in its terms or in its effect. The General Assembly shall act on the incorporation, organization, government, or affairs of municipal corporations only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in (c) of this section.

(c) The General Assembly may classify all municipal corporations by grouping them into not more than four classes based on population as determined by the most recent United States Government census. No more than one grouping shall be in effect at any

time; the enactment of any grouping shall repeal any other grouping then in effect.

(d) A municipal corporation shall have the power to amend or repeal its charter or local laws and to adopt a new charter and to amend or repeal it.

(e) The adoption of a new charter, the amendment of any charter or local laws, or the repeal of any part of a charter or local laws shall be proposed either by a resolution of the legislative body of the municipal corporation or by a petition containing the signatures of at least five per cent of the registered voters of the municipal corporation and filed with its legislative body.

(f) All charter provisions and charter amendments adopted under the provisions of this Article shall be subject to all applicable laws enacted by the General Assembly. Any local laws, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation enacted before this Article becomes effective shall be subject to the charter provisions of this Article. Any local law, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation in effect at the time this Article becomes effective shall be subject to any applicable State law enacted after this Article becomes effective.

ARTICLE XII. INTERGOVERNMENTAL RELATIONS

Section 12.01. Intergovernmental Cooperation. Nothing in this Constitution shall be construed to prohibit:

(1) the cooperation of the government of this State with any other governments; or

(2) the cooperation of the government of any county, city or other civil division with any one or more other governments in the administration of their functions and powers; or

(3) the consolidation of existing civil divisions of the State. Any county, city or other civil division may agree, except as limited by general law, to share the costs and responsibilities of functions and services with any one or more other governments.

DISCUSSION OF LOCAL GOVERNMENT ARTICLE.

The Committee on Political Subdivisions and Local Legislation has carefully studied the alternative approaches to the local government article as contained in its Fourth Report. It was recognized that the existing local government articles discourage local initiative and are generally inflexible. Yet there are many desirable features there as is evidenced by Maryland's comparatively unique and somewhat satisfactory local government arrangements. The first alternative approach was basically a retention of the local government articles with the significant addition of a requirement for mandatory home rule.

Inherent in the second alternative approach, as contained in the Fourth Report, was the necessity of major revisions in the existing governmental structures and in the traditions of the State.

Your committee has, in its opinion, successfully compromised the two approaches in this proposed article; the extremes of each have been deleted, and the desirable features have been sifted and harmonized into a practical and realistic vehicle providing flexi-

bility and strength in the various state and local governmental relations.

In accord with an earlier decision of the Commission, home rule has been made directly available to the existing counties whether they are charter or non-charter. The road to effective exercise of the powers inherent in home rule has likewise been established by optional provisions facilitating the transition to and utilization of the home rule powers granted. In effect, a county will have the choice of a plan proposed by the General Assembly, by its own charter board, or one submitted by its governing body to the voters. There is no requirement that there be a charter since, although the Committee recognizes the desirability of such a form of county government, it was felt that there should be flexibility and broad freedom of choice.

With respect to municipalities, the Committee strongly recommends that the present approach be maintained as existing Article 11E of the present Constitution and Article 23A of the Code present municipalities a great range of choice and freedom of action.

Preserving the traditional approach with respect to the cities, the essential difference between the two articles is the treatment of the home rule powers of the subdivisions. Whereas the present Constitution leaves determination of the home rule powers to the General Assembly through a grant of express powers, the proposed article gives the counties a broad grant of power which can be limited by the General Assembly only through general legislation and the use of limited classification.

Thus this new Local Government Article proposed by the Committee contains the following basic provisions:

1. Each county will have a maximum degree of latitude in selecting the structure of its own local government.
2. The home rule counties and cities can exercise any power not specifically denied to them by general law, the home rule charter, or the state constitution.
3. The General Assembly is given the power to classify counties and cities for general legislation.

There are several important reasons why the Committee recommends a broad grant of power to the counties. This will set the localities free to solve their problems unless the General Assembly denies them this freedom. This will free the localities from the time-consuming process of going hat-in-hand to the General Assembly, seeking permission before moving into a new area of governmental endeavor. It will thus stimulate initiative in solving problems at the local level. It also will free the localities from the dead hand of a General Assembly which refuses to act.

This broad grant of powers, in effect, gives residual powers of government to the counties. At the same time, however, this approach leaves the General Assembly free (through its power of withdrawal) to solve on a statewide or regional basis those problems which have outgrown the individual subdivisions.

With the broad grant of powers, however, the Committee recommends that the General Assembly be given the power to classify counties when withdrawing powers through general legislation. This is necessary to give the General Assembly jurisdiction over subdivisions which might, under the broad grant of powers, start

engaging in practices that are detrimental to the State as a whole. Through this defined use of classification, the General Assembly will be able to control such detrimental activities without having to pass statewide legislation.

What the Committee proposes here frees both the county governments and the General Assembly to solve the problems of the people of Maryland. The county subdivisions will have the freedom of a broad grant of power, but the General Assembly will have the freedom to remove these powers, when necessary, through general laws and its limited power of classification.

The important effect of the broad grant of power is to revitalize and stimulate the initiative of local governments. The General Assembly, at its initial session following the adoption of the new constitution, will have the responsibility of clarifying legislative lines by determining what are the appropriate subjects for general law and matters of statewide concern. In the process of withdrawing such powers, the General Assembly will effect the much needed redefinition of the patterns of county-state relationships. It is the firm belief of the Committee that the General Assembly, as it embarks on this important redefinition of powers, will produce a more rational system than the present complicated structure of state-county relationships.

The Committee recommends that all 23 counties of Maryland and the City of Baltimore be invested with a home rule form of government as this will free the General Assembly from the task of enacting local legislation for the non-home rule counties. It is the Committee's belief that, freed of the burden of local legislation, the General Assembly will concentrate its full time on solving

statewide problems.

The Committee feels that the General Assembly should have some role to play in determining how each county will go about structuring its government. The Committee therefore proposes that the General Assembly be given the power to provide several paths to home rule for the counties in addition to the present charter board path provided in the existing Constitution. Thus the new Local Government Article calls on the General Assembly to adopt a series of model home rule charters as well as giving it the option of simply granting home rule powers to the existing county governments (code home rule).

SECTION-BY-SECTION ANALYSIS OF THE LOCAL GOVERNMENT ARTICLE.

Section 11.01. Organization of Local Government.

(a) For the purposes of this Article, Baltimore City shall be considered a county.

(b) The General Assembly shall provide by law for the government of counties, cities and other civil divisions, and for methods and procedures of creating, incorporating, merging, consolidating, changing, and dissolving civil divisions and altering their boundaries. No new county shall be created without the consent of a majority of the votes cast by the qualified voters residing within the area of the proposed county. The lines of no county shall be changed without the consent of a majority of the votes cast by the qualified voters residing within the area proposed to be transferred from one county to another. If the General Assembly wishes to change the lines of more than three existing counties, this proposal shall require the consent of a majority of the votes cast by the qualified voters of the State rather than of the voters residing within the areas proposed to be transferred from one county to another.

(c) The General Assembly may provide, notwithstanding any other provisions of this Article, for the creation of inter-governmental authorities, on its own initiative or on the request of one or more political subdivisions, to administer single- or multiple-purpose functions or services which transcend local boundaries and are not soluble through interlocal cooperation. The General Assembly may grant these authorities power to tax and collect revenue.

(d) Any county, city or other civil division may agree, except as limited by general law, to cooperate with any one or more other governments or civil divisions in the administration of their functions and powers, and to share the costs and responsibilities of these joint functions and services.

This section begins by establishing that Baltimore City will be considered a county. Baltimore City has long been organized as a home rule county, and this section constitutionally confirms this status by treating Baltimore City as a county rather than a municipality.

Subsection (b) gives the General Assembly broad powers for determining the overall structure of local government in the State of Maryland. This provision is recommended mainly to provide flexibility in adopting a local government to the needs of the future. The Committee feels that the State of Maryland will want to continue operating with 24 basic units of government (23 counties and Baltimore City) for the immediate future, but that the General Assembly should have flexible powers so that it may alter Maryland local government in the future.

In this regard, provision is made for other civil divisions. Although the Committee does not presently foresee civil divisions other than the existing forms, it strongly feels that a method should be provided for the creating of future governmental structures. The language of this subsection also frees local governments from the necessity of having to seek a constitutional amendment every time they wish to alter their basic structure. There is general agreement among

scholars working in this field that jurisdiction over local government should rest with the General Assembly.

The provision for referendum is contained in subsection (b), thereby providing some rigidity in the present boundaries of the counties in Maryland as there would have to be a referendum of those who would find themselves in any newly-created area of the State. Subsection (b), however, calls for a statewide vote only, should the General Assembly decide to make any major revision in the basic design of Maryland local government.

Subsections (c) and (d) provide for easy cooperation between the counties and cities of Maryland in meeting regional or metropolitan problems. It should be noted that these two provisions restrict the General Assembly's power to act on regional matters to only those incidences where local governments fail to solve their own problems.

The Committee feels that these provisions, leaving local governments free to work together, are vital in an age of metropolitan growth extending across present county boundary lines.

Section 11.02. Powers of County Governments.

(a) A county may exercise any legislative power or perform any function which is not denied to it by its charter, to counties generally, or to counties of its class, and is within the limitations the General Assembly may establish by general law. This grant of home rule powers shall not include power to enact private or civil law except as incident to an exercise of an independent county power, nor shall it include power to define and provide for the punishment of a felony.

(b) The General Assembly shall legislate for counties only by general laws which shall in their terms and in their effect apply alike to all counties. No county shall exempt itself from any general law; provided, however, that the General Assembly may provide by general law for the establishment of classes of counties by grouping them into not more than five classes with not less than three counties in any one class. The General Assembly may then pass laws applicable to all counties within a class. The establishment of classes shall be based either upon population as determined in the most recent United States Government census or upon such other criteria as are determined by the General Assembly to be appropriate. No more than one grouping of counties into five or fewer classes shall be in effect at any time; the enactment of any grouping shall repeal any other grouping then in effect.

Section 11.02(a) is the key section of this Local Government Article. The language provides that home rule counties and cities can exercise any power not specifically denied to them by general law, the home rule charter, or the state Constitution.

Here the counties are endowed, through the Constitution, with all the lawmaking power of the General Assembly, but the latter may deny the counties any power by general act. This provision thus sets the counties free to solve any problem they wish unless the General Assembly specifically denies them the power to solve that problem through general legislation. Thus the presumption in judicial interpretation would be that the county has the power to act unless it has been specifically denied.

It is to be noted that no restriction is imposed on the counties' power to tax. Since this problem was dealt with in the Committee's Third Report, it need not be further discussed other than to note that the decision there made has been adhered to.

The merit of this plan is that it frees the counties from having to seek permission from the General Assembly before they can move into a new area of governmental endeavor. It thus stimulates initiative in solving problems at the local level. It also frees the counties from being hemmed in by a General Assembly that refuses to act.

The presumption under this plan is that the counties will be protected from undue interference by the General Assembly in that any withdrawal of power will have to be by general legislation. Further protection is afforded by defining general laws as those that are general in terms and effect. Thus, to withdraw power from a particular county, the General Assembly would be required to withdraw power from all the counties in the same classification simultaneously. The assumption is that such a withdrawal of power from all the counties in a particular classification would be very difficult to achieve unless it had the support of a majority of the counties and a majority of the voters in the counties.

This broad grant of powers, in effect, gives all residual powers of government to the counties. At the same time, however, this approach leaves the General Assembly free (through its power of withdrawal) to solve on a statewide and regional basis those problems which have outgrown the boundaries of a particular subdivision or group of subdivisions. The goal here is to unshackle the counties

from domination by the General Assembly, but at the same time not to shackle the ability of the General Assembly to grapple with statewide problems and regional problems.

This plan is a significant revision of the present method by which county powers are handled under the Constitution. Article XI (City of Baltimore) and Article XI A (Local Legislation) specifically empower the General Assembly to allocate county powers. In fact, under the present Constitution, the General Assembly is empowered to repeal all county powers.

The effect of Articles XI and XI A has been to hamstring the county governments in Maryland, forcing them to the time-consuming process of getting a specific grant of power from the General Assembly before they attempt to solve new and unusual problems. It has also left the counties completely at the mercy of "ripper" bills passed in the General Assembly which take powers away from the county governments and vest them in the local delegation to the General Assembly. Adoption of a broad grant of powers would help to ameliorate both of these problems in Maryland local government.

Hand in hand with this broad grant of power to the subdivisions, however, this section (in subsection (b)) provides that classification powers be granted to the General Assembly when dealing with counties in terms of general law.

Classification by the General Assembly is required because if a county, under the broad grant of power, engaged in practices detrimental to the State as a whole, the General Assembly would have to pass laws applying to the entire State in order to bring this one

county under control. The Committee feels there would be little likelihood of such statewide legislation being enacted simply to bring one county under adequate statewide control.

Therefore, in order to give the General Assembly a measure of control over the subdivisions, the Committee recommends that the General Assembly be permitted to classify the counties into groups for purposes of general legislation. A general law thus would be any law that in terms and effect is applicable to all the counties or to those in one classification. The Committee feels, however, that this power of classification should not be without limitations. It is provided that the counties be grouped into not more than five classes with not less than three counties in any one class. By such means, greater consideration and care must be exercised by the General Assembly. Similarly, there is the restriction that no more than one such grouping into five or fewer classes shall be in effect at any time, thereby precluding the General Assembly from classifying for each piece of legislation. It is further provided that the basis of classification shall be on population or upon such other criteria as are determined by the General Assembly to be appropriate. This would allow classification on a regional or other basis should such a need arise.

The practice of local exemption is thus prohibited. The use of these so-called general-local laws has blurred the lines between general and local legislation and has caused much confusion and loss of legislative effectiveness and uniformity.

What the Committee is trying to do here is to free both the county governments and the General Assembly to solve the problems of the people of Maryland. Under the broad grant of county powers, the counties are given freedom to do everything they can to solve their own problems. On the other hand, the power of classification gives the General Assembly power to reach down and take over the problems of a particular group of counties when they become of statewide concern. Thus the effect of the broad grant of power, coupled with the power of classification, unshackles the county government but, at the same time, leaves the General Assembly a high measure of control over all local government in the State of Maryland.

Section 11.03. Structure of County Governments.

(a) A county shall provide for the structure of its government by any one of the following procedures:

(1) The General Assembly shall provide for optional plans of organization and structure so as to enable a county to adopt or abandon an optional form of local government by a majority vote of the qualified voters voting thereon.

(2) On the request of the executive and legislative authority of any county, or on a petition bearing the signatures of ten per cent of the qualified voters (provided that in any case 10,000 signatures shall be sufficient to complete a petition), the officer or agency responsible for certifying public questions shall provide at the next general election for the election of a charter board of five registered voters from that county. Nominations for members of the charter board may be made not less than 40 days prior to the election by the executive and legislative authority of the county, or not less than 20 days prior to the election by a petition bearing the signatures of five per cent of the qualified voters (provided that in any case 2,000 signatures shall be sufficient to complete a nominating petition).

At the election the ballot shall contain names of the nominees and shall be so arranged as to permit voters to vote for or against the creation of a charter

board. If the majority of the votes cast on the proposal to create a charter board is against the proposal, the election of members of the charter board shall be void. If the majority is in favor of the creation of a charter board, then the five nominees receiving the largest number of votes shall constitute the charter board.

Any proposed charter or charter amendments shall be published by the charter board, made available to the qualified voters, and submitted to them at the first general election more than 30 days after publication. The executive and legislative authority of the county shall, on request of the charter board, appropriate money to provide for the reasonable expenses of the commission and for publication, distribution, and submission of its proposals.

A charter or charter amendments shall become effective if approved by a majority of the votes cast by qualified voters. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local executive and legislative authority. On its adoption the charter shall become the law of the county subject only to the Constitution and public general laws of this State, and any public local laws inconsistent with its provisions and any former charter shall be thereby repealed.

(3) The governing body of any non-charter county, by a majority vote of its elected members, may

propose by resolution that the county become a charter county and that an initial charter be prepared by the means it specifies. Upon the completion of a proposed charter, it shall be published, made available to the qualified voters and submitted to them at the first general election more than 30 days after publication. The charter shall become effective if approved by a majority of the votes cast by qualified voters. If adopted, it will be subject to the same constitutional limitations and privileges as those charters first submitted by a charter board.

However, if at a general election there shall be submitted to the voters of the county a proposed charter drawn by a charter board, only that charter shall be submitted. If the charter board proposed charter is adopted by the voters, any charter drawn by a means specified by the county governing body shall not be submitted to the voters and shall have no further effect. If a charter drawn by the charter board is rejected by the voters, the charter drawn by a means specified by the county governing body shall be submitted to the voters at the general election two years later, and no other charter shall be submitted at that election.

Comment:

Since by the grant of home rule power the counties will have home rule, the purpose of this section is to provide for many choices in the determination of structure and form of local government in order

to best employ these powers. The present Constitution is very restrictive, because it allows only two options to county governments. They must either be a non-home rule county or become a charter county with a charter drawn by a charter board. The purpose of this new language, in providing many options for county government, is to let each county adopt whatever form of government it desires.

Subsection (1) gives the General Assembly the power to draw up sample county charters which may be adopted by a county if it wishes. Making available such county charters will save many counties the trouble of going through the often difficult procedure of creating a charter board.

Subsection (1) also gives the General Assembly power to provide for any type of county government which a county desires. The Committee would recommend that the General Assembly consider providing a form of code home rule for the counties by statute under this section. Such a code option would be similar to the code home rule amendment going before the voters in the November 1966 general election.

Subsection (2) is substantially the language of the present Constitution concerning home rule for charter counties and Baltimore City. This guarantees local governments the right to form charter governments and thus remove themselves to a certain degree from the control of the General Assembly. Maryland is fortunate in having a strong form of charter home rule for those counties which desire it, and for this reason this existing option is retained.

Subsection (3) is basically a shortcut for organizing county governments along charter lines. For those counties which do not wish

to go to the trouble and expense of electing a charter board, subsection (3) provides the alternative of having the existing county government write a charter by whatever means it thinks appropriate. Such a charter could then go before the voters at the next general election. One of the great strengths of this option is that it brings the existing county governments into the drawing of the new charter. One of the problems with use of a charter board has been that, too often, the charter board has been interpreted as a repudiation of the existing county governments rather than as a logical derivative of them.

Section 11.04. City Governments.

(a) For the purposes of this section, the term "municipal corporation" shall not include Baltimore City or any of the other counties of the State.

(b) Except as provided elsewhere in this section, the General Assembly shall not pass any law relating to the incorporation, organization, government or affairs of municipal corporations in this State which will be special or local in its terms or in its effect. The General Assembly shall act on the incorporation, organization, government, or affairs of municipal corporations only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in (c) of this section.

(c) The General Assembly may classify all municipal corporations by grouping them into not more than four

classes based on population as determined by the most recent United States Government census. No more than one grouping shall be in effect at any time; the enactment of any grouping shall repeal any other grouping then in effect.

(d) A municipal corporation shall have the power to amend or repeal its charter or local laws and to adopt a new charter and to amend or repeal it.

(e) The adoption of a new charter, the amendment of any charter or local laws, or the repeal of any part of a charter or local laws shall be proposed either by a resolution of the legislative body of the municipal corporation or by a petition containing the signatures of at least five per cent of the registered voters of the municipal corporation and filed with its legislative body.

(f) All charter provisions and charter amendments adopted under the provisions of this Article shall be subject to all applicable laws enacted by the General Assembly. Any local laws, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation enacted before this Article becomes effective shall be subject to the charter provisions of this Article. Any local law, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation in effect at the time this Article becomes effective shall

be subject to any applicable State law enacted after this Article becomes effective.

The Committee recommends the substantial retention of the present language of the Constitution with respect to municipalities, thus preserving the traditional approach. By virtue of these provisions, a municipality can adopt a charter government without first having to get the approval of the General Assembly. The many choices thus permitted has attracted national attention and praise, since it provides freedom of action in the organization of municipal governments.

The express powers granted by Article 23A of the Code has given to municipalities home rule powers to meet their needs in a manner that it is hoped the proposed broad grant to the counties herein recommended will provide. The General Assembly has transferred to the counties much of its legislative authority dealing with the municipalities, including the requirement of approval by the county for incorporation, merger, annexation and dissolution; rightfully, the counties are greatly concerned because the municipalities are contained within their geographical boundaries.

It should be noted that this language provides for classification of the municipalities, but, at present, the General Assembly has classified the municipalities into only one class. Since there appears to be universal approval in Maryland of the way municipalities are handled in the Constitution, the Committee decided to leave the language relatively unchanged.

ARTICLE XII. INTERGOVERNMENTAL RELATIONS

Section 12.01. Intergovernmental Cooperation. Nothing in this Constitution shall be construed to prohibit:

(1) the cooperation of the government of this State with any other governments; or

(2) the cooperation of the government of any county, city or other civil division with any one or more other governments in the administration of their functions and powers; or

(3) the consolidation of existing civil divisions of the State. Any county, city or other civil division may agree, except as limited by general law, to share the costs and responsibilities of functions and services with any one or more other governments.

DISCUSSION OF ARTICLE XII ON INTERGOVERNMENTAL RELATIONS.

The Committee on Political Subdivisions and Local Legislation recommends a separate article in the new constitution guaranteeing intergovernmental relations.

Article XII is designed to ensure that there are no State constitutional obstacles to cooperation between the State and its civil divisions, other states, and the federal government. The Article cannot remove other obstacles which may exist to interstate cooperation (e.g., any which may be in the federal constitution).

The Committee is aware that much of this Article is repetitive of Article XI, Section 11.01(d). The Committee is also aware that it is very doubtful that any other part of the new constitution

would prohibit the intergovernmental agreements guaranteed by this Article. The Committee believes, however, that it is wise to draw attention in the new constitution to the need for an intergovernmental approach to many of the problems that now face the people of the State of Maryland. By specifically guaranteeing these relations in the new constitution, the Committee hopes to make both the voters and public officials of the State of Maryland aware that such an approach is available and quite clearly constitutional.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

University of Maryland
College Park, Md

CONSTITUTIONAL CONVENTION COMMISSION

SIXTH REPORT

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

October 24, 1966

RE: ARTICLE XI. LOCAL GOVERNMENT AND
INTERGOVERNMENTAL RELATIONS.

The Committee on Political Subdivisions and Local Legislation recommends the following article on local government and intergovernmental relations to the Constitutional Convention Commission for consideration.

ARTICLE XI. LOCAL GOVERNMENT AND
INTERGOVERNMENTAL RELATIONS

Section 11.01. Units of Local Government.

(a) For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean a city, town or village, but shall not include Baltimore City or any county.

(b) The General Assembly may provide by law for the creation of counties and other civil divisions, including regional governments and intergovernmental authorities but excluding municipal corporations, and for methods and procedures of creating, incorporating, changing, merging and dissolving counties and other civil divisions and altering their boundaries.

No new county shall be created without the consent of a majority of the voters voting thereon who reside within the area of the proposed county. The lines of a county shall not be changed without the consent of a majority of the voters voting thereon who reside within the area proposed to be transferred from one county to another. The lines of more than three contiguous counties, but less than all the counties, shall not be changed without the consent of a majority of the voters of the State voting thereon.

Section 11.02. Powers of Counties and Other Civil Divisions.

(a) A county may exercise any power or perform any function which is not denied to it by its charter or by law which in its terms and in its effects is applicable to all counties or to all counties of its class, and which has not been transferred to another civil division.

(b) Classes of counties, based upon population as determined by the most recent United States Census (or upon such other criteria as are determined by the General Assembly to be appropriate), may be provided by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time.

(c) Public general laws may be enacted which shall, in their terms and in their effects, apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law.

(d) The General Assembly may authorize civil divisions, other than counties and municipal corporations, to administer single or multiple purpose functions that transcend local boundaries and grant to them the power to impose and collect revenues, to borrow money and to collect taxes imposed by the General Assembly.

Section 11.03. Structure of County Governments.

(a) A county shall provide for the structure of its government by any one of the following procedures:

(1) The General Assembly shall provide for optional plans of organization and structure so as to enable a county to adopt or abandon an optional form of local government by a majority vote of the qualified voters voting thereon.

(2) On the request of the executive and legislative authority of any county, or on a petition bearing the signatures of ten per cent of the qualified voters (provided that in any case 10,000 signatures shall be sufficient to complete a petition), the officer or agency responsible for certifying public questions shall provide at the next general election for the election of a charter board of five registered voters from that county. Nominations for members of the charter board may be made not less than 40 days prior to the election by the executive and legislative authority of the county, or not less than 20 days prior to the election, by a petition bearing the signatures of five per cent of the qualified voters (provided that in any case 2,000 signatures shall be sufficient to complete a nominating petition).

At the election the ballot shall contain names of the nominees and shall be so arranged as to permit voters to vote for or against the creation of a charter board. If the majority of the votes cast on the proposal to create a charter board is against the proposal, the election of members of the charter board shall be void. If the majority is in favor of the creation of a charter board, then the five nominees receiving the largest number of votes shall constitute the charter board.

Any proposed charter or charter amendments shall be published by the charter board, made available to the qualified voters, and submitted to them at the first general election more than 30 days after publication. The executive and legislative authority of the county shall, on request of the charter board, appropriate money to provide for the reasonable expenses of the board and for the publication, distribution, and submission of its proposals.

A charter or charter amendments shall become effective if approved by a majority of the votes cast by qualified voters. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local executive and legislative authority. On its adoption the charter shall become the law of the county, subject only to the Constitution and public general laws of this State, and any public local laws inconsistent with its provisions and any former charter shall be thereby repealed.

(3) The governing body of any non-charter county, by a majority vote of its elected members, may propose by resolution

that the county become a charter county and that an initial charter be prepared by the means it specifies. Upon the completion of a proposed charter, it shall be published, made available to the qualified voters and submitted to them at the first general election more than 30 days after publication. The charter shall become effective if approved by a majority of the votes cast by qualified voters. If adopted, it will be subject to the same constitutional limitations and privileges as those charters first submitted by a charter board.

However, if at a general election there shall be submitted to the voters of the county a proposed charter drawn by a charter board, only that charter shall be submitted. If the charter board proposed charter is adopted by the voters, any charter drawn by a means specified by the county governing body shall not be submitted to the voters and shall have no further effect. If a charter drawn by the charter board is rejected by the voters, the charter drawn by a means specified by the county governing body shall be submitted to the voters at the general election two years later, and no other charter shall be submitted at that election.

Section 11.04. City Governments.

The counties may provide by public local law for the creation of any new municipal corporation within its boundaries and for methods and procedures of incorporating, changing, merging and dissolving them and altering their boundaries. No existing municipal corporation shall be dissolved without its consent or the consent of the General Assembly by law.

Section 11.05. Intrastate Agreement.

Any county, other civil division or municipal corporation may, except to the extent prohibited by public general law, agree with the State or with any other county, civil division or municipal corporation for the joint administration or any of their functions and powers and the sharing of costs thereof.

SECTION-BY-SECTION ANALYSIS OF THE LOCAL GOVERNMENT ARTICLE.

The Committee on Political Subdivisions and Local Legislation here presents an article on local government which provides for the maximum amount of flexibility in the organization of local units of government. Its basic premise is that the General Assembly should be free to establish any kind of local government, be it regional governments, county governments, municipal governments, or special authorities, districts, or other civil divisions. However, the Committee's primary emphasis is upon strengthening county governments as the strongest system of local government.

In accord with an earlier decision of the Commission, home rule has been made directly available to the existing counties whether they are charter or non-charter. The road to effective exercise of the powers inherent in home rule has likewise been established by optional provisions facilitating the transition to and utilization of the home rule powers granted. In effect, a county will have the choice of a plan proposed by the General Assembly, by its own charter board, or one submitted by its governing body to the voters. There is no requirement that there be a charter since, although the

Committee recognizes the desirability of such a form of county government, it was felt that there should be flexibility and broad freedom of choice.

Thus, this new local government article proposed by the Committee contains the following basic provisions:

1. Each county will have a maximum degree of latitude in selecting the structure of its own local government.

2. The home rule counties can exercise any power not specifically denied to them by general law, the home rule charter, or the state constitution.

3. The General Assembly is given the power to classify counties for general legislation.

There are several important reasons why the Committee recommends a broad grant of power to the counties. This will set the localities free to solve their problems unless the General Assembly denies them this freedom. This will free the localities from the time-consuming process of going hat-in-hand to the General Assembly, seeking permission before moving into a new area of governmental endeavor. It will thus stimulate initiative in solving problems at the local level. It also will free the localities from the dead hand of a General Assembly which refuses to act.

This broad grant of powers, in effect, gives residual powers of government to the counties. At the same time, however, this approach leaves the General Assembly free (through its power of withdrawal) to solve on a statewide or regional basis those problems which have outgrown the individual subdivisions.

With the broad grant of powers, however, the Committee recommends that the General Assembly be given the power to classify counties when withdrawing powers through general legislation. This is necessary to give the General Assembly jurisdiction over subdivisions which might, under the broad grant of powers, start engaging in practices that are detrimental to the State as a whole. Through this defined use of classification, the General Assembly will be able to control such detrimental activities without having to pass statewide legislation.

What the Committee proposes here frees both the county governments and the General Assembly to solve the problems of the people of Maryland. The county subdivisions will have the freedom of a broad grant of power, but the General Assembly will have the freedom to remove these powers, when necessary, through general laws and its limited power of classification.

The important effect of the broad grant of power is to revitalize and stimulate the initiative of local governments. The General Assembly, at its initial session following the adoption of the new constitution, will have the responsibility of clarifying legislative lines by determining what are the appropriate subjects for general law and matters of statewide concern. In the process of withdrawing such powers, the General Assembly will effect the much needed redefinition of the patterns of county-state relationships. It is the firm belief of the Committee that the General Assembly, as it embarks on this important redefinition of powers, will produce a more rational system than the present complicated structure of state-county relationships.

The Committee recommends that all 23 counties of Maryland and the City of Baltimore be invested with a home rule form of government as this will free the General Assembly from the task of enacting local legislation for the non-home rule counties. It is the Committee's belief that, freed of the burden of local legislation, the General Assembly will concentrate its full time on solving statewide problems.

The Committee feels that the General Assembly should have some role to play in determining how each county will go about structuring its government. The Committee therefore proposes that the General Assembly be given the power to provide several paths to home rule for the counties in addition to the present charter board path provided in the existing Constitution. Thus the new local government article calls on the General Assembly to adopt a series of model home rule charters as well as giving it the option of simply granting home rule powers to the existing county governments (code home rule).

With respect to municipalities, the Committee is recommending a new approach. Since all general legislative powers not reserved to the General Assembly have been granted to the county, the Committee believes that the powers of municipalities should flow from the county governments. It is therefore recommended that with respect to municipalities to be created in the future, these municipalities receive their powers from the counties subject to withdrawal by the counties. With respect to existing municipalities, the Committee recommends that the county in which a municipality is located be free to withdraw any powers heretofore granted such municipality with the approval of the municipality or the General Assembly. Any powers granted to existing municipalities would only require action by the county in which the municipality is located.

Section 11.01. Units of Local Government.

(a) For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean a city, town or village, but shall not include Baltimore City or any county.

(b) The General Assembly may provide by law for the creation of counties and other civil divisions, including regional governments and intergovernmental authorities but excluding municipal corporations, and for methods and procedures of creating, incorporating, changing, merging and dissolving counties and other civil divisions and altering their boundaries.

No new county shall be created without the consent of a majority of the voters voting thereon who reside within the area of the proposed county. The lines of a county shall not be changed without the consent of a majority of the voters voting thereon who reside within the area proposed to be transferred from one county to another. The lines of more than three contiguous counties, but less than all the counties, shall not be changed without the consent of a majority of the voters of the State voting thereon.

COMMENT:

This section begins by establishing that Baltimore City will be considered a county. Baltimore City has long been organized as a home rule county, and this section constitutionally confirms this by treating Baltimore City as a county rather than a municipal corporation. Definition is also given to "municipal corporation," although that form of government is specifically dealt with in Section 11.04.

Subsection (b) gives the General Assembly broad powers for determining the overall structure of local government in the State of Maryland. This provision is recommended mainly to provide flexibility in better adopting a local government to the needs of the State. The Committee feels that the State of Maryland will want to continue operating with 24 basic units of government (23 counties and Baltimore City) for the immediate future, but that the General Assembly should have flexible powers so that it may alter Maryland local government in the future.

In this regard, provision is made for other civil divisions. By way of definition of that phrase, the Commission recommended at its meeting of September 20, 1966, that specific mention be made of regional governments in order to emphasize a structure of government strongly gaining recognition.

The thinking of the Committee is that a mandate requiring the immediate establishment of regional government is inexpedient as well as impracticable but recognizes the strong possibility that an intermediate tier of representative government between the counties and the State may well be the only answer for problems incapable of solution on the local level. The Committee feels, however, that the establishment of regional governments, or similar civil divisions, should come about by an evolutionary process, and that this can best be accomplished through the legislature which, under this subsection, has full power when the need arises.

Intergovernmental authorities are also mentioned by way of further definition of the phrase "civil division," although they are specifically dealt with in Section 11.02(d).

In addition to providing for the creation of future governmental structures by the General Assembly, this subsection frees local governments from the necessity of having to seek a constitutional amendment every time they wish to alter their basic structure.

The second paragraph of this subsection places certain restrictions on change by requiring local and statewide referendum. This method provides some rigidity in the present boundaries of the counties in Maryland as there would have to be a referendum of those who find themselves in any newly-created area of the State. A statewide referendum is required in the event that the General Assembly decides to make any major revisions of the lines of more than three, but less than all, of the counties.

The Committee feels that this section provides great flexibility and lends direction and emphasis for future change should the need arise.

Section 11.02. Powers of Counties and Other Civil Divisions.

(a) A county may exercise any power or perform any function which is not denied to it by its charter or by law which in its terms and in its effects is applicable to all counties or to all counties of its class, and which has not been transferred to another civil division.

(b) Classes of counties, based upon population as determined by the most recent United States Census (or upon such other criteria as are determined by the General Assembly to be appropriate), may be provided by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time.

(c) Public general laws may be enacted which shall, in their terms and in their effects, apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law.

(d) The General Assembly may authorize civil divisions, other than counties and municipal corporations, to administer single or multiple purpose functions that transcend local boundaries and grant to them the power to impose and collect revenues, to borrow money and to collect taxes imposed by the General Assembly.

COMMENT:

Section 11.02(a) is the key section of this local government article. The language provides that all counties may exercise any power not specifically denied to them by general law, the home rule charter, or the state constitution.

Here the counties are endowed, through the constitution, with all the power of the General Assembly, but the latter may deny the counties any power by general act. This provision thus sets the counties free to solve any problem they wish unless the General Assembly specifically denies them the power to solve that problem through general legislation. Thus the presumption in judicial interpretation would be that the county has the power to act unless it has been specifically denied.

It is to be noted that no restriction is imposed on the counties' power to tax. This problem was dealt with in the Committee's Third Report, and therefore need not be further discussed other than to note that the Committee recommends that the constitution place no limitations whatsoever on the financial and taxing powers of the counties.

The merit of this plan is that it frees the counties from having to seek permission from the General Assembly before they can

move into a new area of governmental endeavor. It thus stimulates initiative in solving problems at the local level. It also frees the counties from being hemmed in by a General Assembly that refuses to act.

The presumption under this plan is that the counties will be protected from undue interference by the General Assembly in that any withdrawal of power will have to be by general legislation. Further protection is afforded by defining general laws as those that are general in terms and effect. Thus, to withdraw power from a particular county, the General Assembly would be required to withdraw power from all the counties in the same classification simultaneously. The assumption is that such a withdrawal of power from all the counties in a particular classification would be very difficult to achieve unless it had the support of a majority of the counties and a majority of the voters in the counties.

This broad grant of powers, in effect, gives all residual powers of government to the counties. At the same time, however, this approach leaves the General Assembly free (through its power of withdrawal) to solve on a statewide and regional basis those problems which have outgrown the boundaries of a particular subdivision or group of subdivisions. The goal here is to unshackle the counties from domination by the General Assembly, but at the same time not to shackle the ability of the General Assembly to grapple with statewide problems and regional problems.

This plan is a significant revision of the present method by which county powers are handled under the Constitution. Article XI (City of Baltimore) and Article XI A (Local Legislation) specifically empower the General Assembly to allocate county powers.

The effect of Articles XI and XI A has been to hamstring the county governments in Maryland, forcing them to the time-consuming process of getting a specific grant of power from the General Assembly before they attempt to solve new and unusual problems. It has also left the counties completely at the mercy of "ripper" bills passed in the General Assembly which take powers away from the county governments and vest them in the local delegation to the General Assembly. Adoption of a broad grant of powers would help to ameliorate both of these problems in Maryland local government.

Hand in hand with this broad grant of power to the subdivisions, however, this section (in subsection (b)) provides that classification powers be granted to the General Assembly when dealing with counties in terms of general law.

Classification by the General Assembly is required because if a county, under the broad grant of power, engaged in practices detrimental to the State as a whole, the General Assembly would have to pass laws applying to the entire State in order to bring this one county under control. The Committee feels there would be little likelihood of such statewide legislation being enacted simply to bring one county under adequate statewide control.

Therefore, in order to give the General Assembly a measure of control over the subdivisions, the Committee recommends that the General Assembly be permitted to classify the counties into groups for purposes of general legislation. A general law thus would be any law that in terms and effect is applicable to all the counties or to those in one classification. The Committee feels, however, that this

power of classification should not be without limitations. It is provided that the counties be grouped into not more than five classes with not less than three counties in any one class. By such means, greater consideration and care must be exercised by the General Assembly. Similarly, there is the restriction that no more than one such grouping into five or fewer classes shall be in effect at any time, thereby precluding the General Assembly from classifying for each piece of legislation. It is further provided that the basis of classification shall be on population (or upon such other criteria as are determined by the General Assembly to be appropriate). This would allow classification on a regional, or other, basis should such a need arise.

The practice of local exemption is also prohibited. The use of these so-called general local laws has blurred the lines between general and local legislation and has caused much confusion and loss of legislative effectiveness and uniformity.

What the Committee is trying to do here is to free both the county governments and the General Assembly to solve the problems of the people of Maryland. Under the broad grant of county powers, the counties are given freedom to do everything they can to solve their own problems. On the other hand, the power of classification gives the General Assembly power to reach down and take over the problems of a particular group of counties when they become of statewide concern. Thus the effect of the broad grant of power, coupled with the power of withdrawal, unshackles the county government but, at the same time, leaves the General Assembly a high measure of control over all local government in the State of Maryland.

The Committee also has addressed itself to the problem of the state legislature creating jobs and government agencies which must be paid for by the local subdivisions. It is the view of the Committee that the state government should provide the necessary funds for the jobs and the agencies which it creates. The Committee further feels that the constitution should require that any state legislation requiring financial payment by the local subdivisions must first be submitted to the local government of the subdivision for approval and also be subject to a permissive referendum by the voters of the subdivision. (A permissive referendum would be one in which a certain number of signatures gathered by petition would put the expenditure in question on the ballot at the next general election.)

Section 11.03. Structure of County Governments.

(a) A county shall provide for the structure of its government by any one of the following procedures:

(1) The General Assembly shall provide for optional plans of organization and structure so as to enable a county to adopt or abandon an optional form of local government by a majority vote of the qualified voters voting thereon.

(2) On the request of the executive and legislative authority of any county, or on a petition bearing the signatures of ten per cent of the qualified voters (provided that in any case 10,000 signatures shall be sufficient to complete a petition), the officer or agency responsible for certifying public questions shall provide at the next general election for the election of a charter

board of five registered voters from that county. Nominations for members of the charter board may be made not less than 40 days prior to the election by the executive and legislative authority of the county, or not less than 20 days prior to the election, by a petition bearing the signatures of five per cent of the qualified voters (provided that in any case 2,000 signatures shall be sufficient to complete a nominating petition).

At the election the ballot shall contain names of the nominees and shall be so arranged as to permit voters to vote for or against the creation of a charter board. If the majority of the votes cast on the proposal to create a charter board is against the proposal, the election of members of the charter board shall be void. If the majority is in favor of the creation of a charter board, then the five nominees receiving the largest number of votes shall constitute the charter board.

Any proposed charter or charter amendments shall be published by the charter board, made available to the qualified voters, and submitted to them at the first general election more than 30 days after publication. The executive and legislative authority of the county shall, on request of the charter board, appropriate money to provide for the reasonable expenses of the board and for the publication, distribution, and submission of its proposals.

A charter or charter amendments shall become effective if approved by a majority of the votes cast by qualified voters. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local executive and legislative authority. On its adoption the charter shall become the

law of the county, subject only to the Constitution and public general laws of this State, and any public local laws inconsistent with its provisions and any former charter shall be thereby repealed.

(3) The governing body of any non-charter county, by a majority vote of its elected members, may propose by resolution that the county become a charter county and that an initial charter be prepared by the means it specifies. Upon the completion of a proposed charter, it shall be published, made available to the qualified voters and submitted to them at the first general election more than 30 days after publication. The charter shall become effective if approved by a majority of the votes cast by qualified voters. If adopted, it will be subject to the same constitutional limitations and privileges as those charters first submitted by a charter board.

However, if at a general election there shall be submitted to the voters of the county a proposed charter drawn by a charter board, only that charter shall be submitted. If the charter board proposed charter is adopted by the voters, any charter drawn by a means specified by the county governing body shall not be submitted to the voters and shall have no further effect. If a charter drawn by the charter board is rejected by the voters, the charter drawn by a means specified by the county governing body shall be submitted to the voters at the general election two years later, and no other charter shall be submitted at that election.

COMMENT:

Since by the grant of home rule power the counties will have home rule, the purpose of this section is to provide for many choices

in the determination of structure and form of local government in order to best employ these powers. The present Constitution is very restrictive, because it allows only two options to county governments. They must either be a non-home rule county or become a charter county with a charter drawn by a charter board. The purpose of this new language, in providing many options for county government, is to let each county adopt whatever form of government it desires.

Subsection (1) gives the General Assembly the power to draw up sample county charters which may be adopted by a county if it wishes. Making available such county charters will save many counties the trouble of going through the often difficult procedure of creating a charter board.

Subsection (1) also gives the General Assembly power to provide for any type of county government which a county desires. The Committee would recommend that the General Assembly consider providing a form of code home rule for the counties by statute under this section. Such a code option would be similar to the code home rule amendment going before the voters in the November, 1966, general election.

Subsection (2) is substantially the language of the present Constitution concerning home rule for charter counties and Baltimore City. This guarantees local governments the right to form charter governments and thus remove themselves to a certain degree from the control of the General Assembly. Maryland is fortunate in having a strong form of charter home rule for those counties which desire it, and for this reason this existing option is retained.

Subsection (3) is basically a shortcut for organizing county governments along charter lines. For those counties which do not wish to go to the trouble and expense of electing a charter board, subsection (3) provides the alternative of having the existing county government write a charter by whatever means it thinks appropriate. Such a charter could then go before the voters at the next general election. One of the great strengths of this option is that it brings the existing county governments into the drawing of the new charter. One of the problems with use of a charter board has been that, too often, the charter board has been interpreted as a repudiation of the existing county governments rather than as a logical derivative of them.

Section 11.04. City Governments.

The counties may provide by public local law for the creation of any new municipal corporation within its boundaries and for methods and procedures of incorporating, changing, merging and dissolving them and altering their boundaries. No existing municipal corporation shall be dissolved without its consent or the consent of the General Assembly by law.

COMMENT:

Section 11.04 is proposed as the entire constitutional provision on municipal corporations. Since the Committee views the municipal corporations as governments of limited jurisdiction within the counties which are granted general governmental powers, the Committee submits that to avoid irresolvable conflicts between the

counties and municipal corporations, the counties should be given the power to provide by public local law for the creation of any new municipal corporation within its boundaries and for methods and procedures of incorporating, changing, merging and dissolving such new municipal corporations and altering their boundaries. The Committee suggests that this provision would empower the counties to grant and withdraw to new municipal corporations those powers which the county should determine appropriate.

The Committee further recommends that existing municipal corporations be treated as non-conforming uses, recognizing in their behalf a greater right to continued existence and for the exercise of previously granted powers than would be possessed by municipal corporations created after the effective date of this constitution. It is proposed that existing municipal corporations be subject to dissolution or to withdrawal of existing powers by the county governments of the counties in which they are located only with their own approval or with the approval of the General Assembly. New powers would be granted to existing municipal corporations and would be subject to withdrawal solely by the county government.

Section 11.05. Intrastate Agreement.

Any county, other civil division or municipal corporation may, except to the extent prohibited by public general law, agree with the State or with any other county, civil division or municipal corporation for the joint administration of any of their functions and powers and the sharing of costs thereof.

COMMENT:

Section 11.05 is designed to insure that there are no state constitutional obstacles to cooperation between the State and its civil divisions, or among the civil divisions themselves. It may be argued that this section is unnecessary, in that there is no prohibition against such agreements in the Constitution; however, the Committee feels that its presence will serve the useful purpose of strengthening intrastate cooperation, which appears to offer a valuable means of solving the increasingly difficult urban problems straddling the State's political boundaries.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

CONSTITUTIONAL CONVENTION COMMISSION

SEVENTH REPORT

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

Maryland House
University of Maryland Library
College Park, Md.

November 21, 1966

RE: ARTICLE XI. LOCAL GOVERNMENT
AND INTERGOVERNMENTAL RELATIONS

The Committee on Political Subdivisions and Local Legislation recommends the following article on local government and inter-governmental relations to the Constitutional Convention Commission for consideration.

ARTICLE XI. LOCAL GOVERNMENT

Section 11.01. Units of Local Government.

(a) For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean an incorporated city, town or village, but shall not include Baltimore City or any county.

(b) The General Assembly may provide by law for the creation, incorporation, changing, merging, dissolution and the alteration of boundaries of counties and multi-county civil divisions, including regional representative governments and intergovernmental authorities.

(c) The General Assembly may create, merge, dissolve and alter the boundaries of any county only by a three-fifths vote of the membership of each house.

Section 11.02. Regional Governments and Other Civil Divisions.

(a) Multi-county regional representative governments and intergovernmental authorities may be established by the General Assembly, by concurrent action of the county legislative bodies, or by affirmative action of a majority of the registered voters of a proposed region voting upon a petition submitted by the residents of the proposed region bearing the names of registered voters equal to five per cent of those voting for governor in the most recent gubernatorial election.

(b) Powers may be vested in a regional government either by the governing bodies of all counties within or partly within a region relinquishing powers to it, by the General Assembly enacting a law withdrawing specified powers from all counties within or partly within a region, or by the General Assembly delegating powers of the State to a region. The power to impose and collect revenues, to borrow money and to collect taxes may be vested in the regional governments by law, or by the consenting counties.

(c) The General Assembly or other representative governments may grant to intergovernmental authorities the power to impose and collect revenues, to borrow money and to collect taxes.

Section 11.03. Powers of Counties.

(a) A county may exercise any power, other than judicial power, or perform any function which is not denied to it by this Constitution, by its charter or by law which in its terms and in its effects is applicable to all counties or to all counties of its class, and which has not been transferred to another civil division.

(b) Classes of counties, based upon population as determined by the most recent United States Census or upon other criteria, may be provided by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time.

(c) The General Assembly may enact only public general laws which shall, in their terms and in their effects, apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law applicable to counties in its class.

Section 11.04. Structure of County Governments.

(a) The General Assembly shall provide by law for methods and procedures by which the governing body or the voters of a non-charter county by petition may enact an instrument of government subject to ratification by a majority vote of the voters of the county voting thereon. The General Assembly shall provide by law for an instrument of government for all non-charter counties existing on January 1 of the fourth year following the effective date of this Constitution.

(b) Until such time as the county adopts a plan or the General Assembly plan becomes effective, the existing county governments shall have those powers provided in the Constitution.

(c) Any instrument of government of a county shall provide for its amendment by a majority vote of the voters of the county voting on any amendment submitted by the governing body or by the petition of the voters in accordance with its provisions.

Section 11.05. Municipal Corporations.

A county may provide by public local law for the creation, incorporation, changing, merging, dissolution and altering of boundaries of its municipal corporations and may delegate powers to them. No existing municipal corporation may be dissolved or be subject to the withdrawal of any existing powers without either its consent or the consent of the General Assembly by law.

Section 11.06. Intrastate Intergovernmental Agreement.

Any county, other civil division or municipal corporation may, except to the extent prohibited by law, agree with the State or with any other county, civil division or municipal corporation for the joint administration of any of their functions and powers and the sharing of costs thereof.

Section _____.

The General Assembly shall provide from the general funds of the State necessary costs, salaries and expenses incidental to the establishment and administration of all agencies, offices or positions created by it, except local boards of education, or election. required by public general law.

SECTION-BY-SECTION ANALYSIS OF THE LOCAL GOVERNMENT ARTICLE.

The Committee on Political Subdivisions and Local Legislation here presents an article on local government which provides for the maximum amount of flexibility in the organization and powers of local units of government. Its basic premise is that the General Assembly should be free to establish different forms of local

governments, exclusive of municipal corporations, when and if the need arises. However, the Committee, in line with the direction of the Commission, has placed primary emphasis upon strengthening county governments as the basic system of local government. The State of Maryland has strong county traditions and is unique among the states, in that this unit of government has prevailed as the strongest

In accord with an earlier decision of the Commission, home rule has been made directly available to the existing counties whether they are charter or non-charter. The road to effective exercise of the powers inherent in home rule has likewise been established by provisions whereby the General Assembly will provide by law for methods and procedures by which the governing bodies of non-charter counties may enact an instrument of government subject to ratification by the voters.

There are several important reasons why the Committee recommends a broad grant of power to the counties. The localities will be set free to solve their problems unless the General Assembly denies them this freedom. They will also be free from the time-consuming process of going hat-in-hand to the General Assembly seeking permission before moving into a new area of governmental endeavor. It will thus stimulate initiative in solving problems at the local level. It also will free the localities from the dead hand of a General Assembly which refuses to act.

This broad grant of power, in effect, gives residual powers to the counties. At the same time, however, this approach leaves the General Assembly free (through its power of withdrawal) to solve on a statewide or regional basis those problems which have outgrown the individual subdivisions.

Classification of the counties is provided for. In this manner, the General Assembly will have jurisdiction over subdivisions which might, under the broad grant of powers, start engaging in practices that are detrimental to the State as a whole.

The important effect of the broad grant of power is to revitalize and stimulate the initiative of local governments. The General Assembly, at its initial session following the adoption of the new constitution, will have the responsibility of clarifying legislative lines by determining what are the appropriate subjects for general law and matters of statewide concern. In the process of withdrawing such powers, the General Assembly will effect a much needed redefinition of the patterns of county-state relationships. It is the firm belief of the Committee that the General Assembly, as it embarks on this important redefinition of powers, will produce a more rational system than the present complicated structure of state-county relationships.

With respect to municipalities, the Committee is recommending a new approach. Since all general legislative powers not reserved to the General Assembly have been granted to the county, the Committee believes that the powers of municipalities should flow from the county governments. It is therefore recommended that with respect to municipalities to be created in the future, these municipalities receive their powers from the counties subject to withdrawal by the counties. With respect to existing municipalities, the Committee recommends that they not be subject to dissolution or withdrawal of existing powers without the consent of the county and the municipality or the consent of the General Assembly.

Section 11.01. Units of Local Government.

(a) For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean an incorporated city, town or village, but shall not include Baltimore City or any county.

(b) The General Assembly may provide by law for the creation, incorporation, changing, merging, dissolution and the alteration of boundaries of counties and multi-county civil divisions, including regional representative governments and intergovernmental authorities.

(c) The General Assembly may create, merge, dissolve and alter the boundaries of any county only by a three-fifths vote of the membership of each house.

COMMENT:

This section begins by establishing that Baltimore City will be considered a county. Baltimore City has long been organized as a home rule county, and this section constitutionally confirms this by treating Baltimore City as a county rather than a municipal corporation. Definition is also given to "municipal corporation" although that form of government is specifically dealt with in Section 11.05.

Subsection (b) gives the General Assembly broad powers for determining the overall structure of local government in the State of Maryland, in that great flexibility is provided for future change. The Committee feels that the State of Maryland will want to continue operating with 24 basic units of government (23 counties and

Baltimore City) for the immediate future, but that the General Assembly should have sufficient power to alter local government in the future.

The draft of this subsection reflects certain changes from the language contained in the Sixth Report. Refinement and structure is to be noted, as well as further definition of terms. In line with the Commission's earlier recommendations, specific mention is made of regional governments as a form of local government available to the General Assembly. This unit of government which, in effect, would be an intermediate tier between the county and state governments, the Commission and the Committee feel should be of a representative, as opposed to an appointive, nature. In addition to this qualification of regional governments, civil divisions are now limited to "multi-county." The Committee recommends this narrowing of definition for the reason that all municipal corporations not in existence at the time that the constitution is adopted will be subservient to their county government.

With regard to the procedure for creating, merging, dissolving and altering the boundaries of counties, the Committee had proposed that approval of the areas affected be required. Mandatory referendum, as set forth in the Sixth Report, was the suggested method; however, the Commission was of the opinion that such a requirement would have the practical effect of precluding change and restricting the General Assembly in an area where it should be free to act. Accordingly, it was resolved that an extraordinary vote of the General Assembly would provide the necessary safeguards against arbitrary change.

The Committee feels that Section 11.01 has evolved to the point where simplicity of form has been synthesized with great

flexibility so as to provide the General Assembly with power to make changes to conform units of local government to future needs.

Section 11.02. Regional Governments and Other Civil Divisions.

(a) Multi-county regional representative governments and intergovernmental authorities may be established by the General Assembly, by concurrent action of the county legislative bodies, or by affirmative action of a majority of the registered voters of a proposed region voting upon a petition submitted by the residents of the proposed region bearing the names of registered voters equal to five per cent of those voting for governor in the most recent gubernatorial election.

(b) Powers may be vested in a regional government either by the governing bodies of all counties within or partly within a region relinquishing powers to it, by the General Assembly enacting a law withdrawing specified powers from all counties within or partly within a region, or by the General Assembly delegating powers of the State to a region. The power to impose and collect revenues, to borrow money and to collect taxes may be vested in the regional governments by law, or by the consenting counties.

(c) The General Assembly or other representative governments may grant to intergovernmental authorities the power to impose and collect revenues, to borrow money and to collect taxes.

COMMENT:

This new section presents a revised approach to regional governments and intergovernmental authorities and is an outgrowth of the Commission's recommendations at the Port Deposit meeting. In accord with the Committee's suggestion, it was the Commission's recommendation that regional governments should be permissive, i.e., constitutional authorization for the legislature to create regional governments in the future.

The Committee is of the opinion that a separate section dealing with regional governments and other civil divisions is appropriate in that certain guidelines can be set forth for establishment of these governments if, and when, the need arises. The Committee recognizes that this separate section might have the effect of overemphasizing a form of local government which is not established by the Constitution itself; however, the Committee feels that provision must be made for methods of establishing and vesting powers in the future.

Subsection (a) provides alternative methods for the establishment of regional governments and intergovernmental authorities. These structures of government may be brought about by action of the General Assembly, by joint action of the legislative bodies in the counties to be affected or by petition and referendum of the residents.

Subsections (b) and (c) deal with the powers to be transferred to regional governments and intergovernmental authorities, respectively. It was realized by the Committee that a vacuum would exist without express provision for the transfer of powers to a regional government

in that all powers would be vested in either the counties or the State. Accordingly, the Committee recommends in subsection (b) that powers should be vested in the regional governments in several alternative ways:

- (1) by the governing bodies of all counties within or partly within the region;
- (2) by the General Assembly enacting a public law withdrawing powers from the counties within or partly within the region;
- (3) by the delegation of powers of the State.

Provision is also made for the granting of taxing powers to the regional governments under subsection (b). Subsection (c), dealing with powers of intergovernmental authorities, provides for the transfer of certain enumerated powers.

Section 11.03. Powers of Counties.

(a) A county may exercise any power, other than judicial power, or perform any function which is not denied to it by this Constitution, by its charter or by law which in its terms and in its effects is applicable to all counties or to all counties of its class, and which has not been transferred to another civil division.

(b) Classes of counties, based upon population as determined by the most recent United States Census or upon other criteria, may be provided by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time.

(c) The General Assembly may enact only public general laws which shall, in their terms and in their effects, apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law applicable to counties in its class.

COMMENT:

Other than stylistic changes, this section is substantially unchanged from the draft contained in the Sixth Report (designated therein as Section 11.02) and approved by the Commission. The provisions of subsection (d) of former Section 11.02 are now embodied in new Section 11.02. One significant addition is the exclusion in subsection (a) of judicial power from the broad grant of power to the counties.

Section 11.03(a) is the key section of this local government article. The language provides that all counties may exercise any power not specifically denied to them by general law, the home rule charter or the state constitution.

Here the counties are endowed, through the Constitution, with all the power of the General Assembly, but the latter may deny the counties any power by general act. This provision thus sets the counties free to solve any problem they wish unless the General Assembly specifically denies them the power to solve that problem through general legislation. Thus the presumption in judicial interpretation would be that the county has the power to act unless it has been specifically denied.

It is to be noted that no restriction is imposed on the counties' power to tax. This problem was dealt with in the Committee's Third Report, and therefore need not be further discussed other than to note that the Committee recommends that the constitution place no limitations whatsoever on the financial and taxing powers of the counties.

The merit of this plan is that it frees the counties from having to seek permission from the General Assembly before they can move into a new area of governmental endeavor. It thus stimulates initiative in solving problems at the local level. It also frees the counties from being hemmed in by a General Assembly that refuses to act.

The presumption under this plan is that the counties will be protected from undue interference by the General Assembly in that any withdrawal of power will have to be by general legislation.

Further protection is afforded by defining general laws as those that are general in terms and effects. Thus, to withdraw power from a particular county, the General Assembly would be required to withdraw power from all the counties in the same classification simultaneously. The assumption is that such a withdrawal of power from all the counties in a particular classification would be very difficult to achieve unless it had the support of a majority of the counties and a majority of the voters in the counties.

This broad grant of powers, in effect, gives all residual powers of government to the counties. At the same time, however, this approach leaves the General Assembly free (through its power of withdrawal) to solve on a statewide and regional basis those problems which have outgrown the boundaries of a particular subdivision or group of subdivisions. The goal here is to unshackle the counties from domination by the General Assembly, but at the same time not to shackle the ability of the General Assembly to grapple with statewide problems and regional problems.

This plan is a significant revision of the present method by which county powers are handled under the Constitution. Article XI (City of Baltimore) and Article XI-A (Local Legislation) specifically empower the General Assembly to allocate county powers.

The effect of Articles XI and XI-A has been to hamstring the county governments in Maryland, forcing them to the time-consuming process of getting a specific grant of power from the General Assembly before they attempt to solve new and unusual problems.

It has also left the counties completely at the mercy of "ripper" bills passed in the General Assembly which take powers away from the county governments and vest them in the local delegation to the General Assembly. Adoption of a broad grant of powers would help to ameliorate both of these problems in Maryland local government.

Hand in hand with this broad grant of power to the subdivisions, however, this section (in subsection (b)) provides that classification powers be granted to the General Assembly when dealing with counties in terms of general law.

Classification by the General Assembly is required because if a county, under the broad grant of power, engaged in practices detrimental to the State as a whole, the General Assembly would have to pass laws applying to the entire State in order to bring this one county under control. The Committee feels there would be little likelihood of such statewide legislation being enacted simply to bring one county under adequate statewide control.

Therefore, in order to give the General Assembly a measure of control over the subdivisions, the Committee recommends that the General Assembly be permitted to classify the counties into groups for purposes of general legislation. A general law thus would be any law that in terms and effect is applicable to all the counties or to those in one classification. The Committee feels, however, that this power of classification should not be without limitations. It is provided that the counties be grouped into not more than five classes with not less than three counties in any one class. By

such means, greater consideration and care must be exercised by the General Assembly. Similarly, there is the restriction that no more than one such grouping into five or fewer classes shall be in effect at any time, thereby precluding the General Assembly from classifying for each piece of legislation. It is further provided that the basis of classification shall be on population (or upon such other criteria as are determined by the General Assembly to be appropriate). This would allow classification on a regional, or other, basis should such a need arise.

The practice of local exemption is also prohibited. The use of these so-called general local laws has blurred the lines between general and local legislation and has caused much confusion and loss of legislative effectiveness and uniformity.

What the Committee is trying to do here is to free both the county governments and the General Assembly to solve the problems of the people of Maryland. Under the broad grant of county powers, the counties are given freedom to do everything they can to solve their own problems. On the other hand, the power of classification gives the General Assembly power to reach down and take over the problems of a particular group of counties when they become of statewide concern. Thus the effect of the broad grant of power, coupled with the power of withdrawal, unshackles the county government but, at the same time, leaves the General Assembly a high measure of control over all local government in the State of Maryland.

Section 11.04. Structure of County Governments.

(a) The General Assembly shall provide by law for methods and procedures by which the governing body or the voters of a non-charter county by petition may enact an instrument of government subject to ratification by a majority vote of the voters of the county voting thereon. The General Assembly shall provide by law for an instrument of government for all non-charter counties existing on January 1 of the fourth year following the effective date of this Constitution.

(b) Until such time as the county adopts a plan or the General Assembly plan becomes effective, the existing county governments shall have those powers provided in the Constitution.

(c) Any instrument of government of a county shall provide for its amendment by a majority vote of the voters of the county voting on any amendment submitted by the governing body or by the petition of the voters in accordance with its provisions.

COMMENT:

Formerly the Committee recommended detailed optional provisions whereby a county could provide for the structure of its government. It had been proposed that initially three paths would be available to the county:

(1) Model home rule charter promulgated by the General Assembly.

(2) The charter board method existing under the present Constitution.

(3) Code home rule.

This section presents a new approach to the provision for structure of county governments and is an outgrowth of the Commission's decision that detailed provisions for this purpose were more properly the subject of general legislation. Accordingly, the Committee recommends that the General Assembly be required to provide by law methods and procedures whereby the governing body or the voters of a non-charter county may petition for the enactment of an instrument of government which thereafter would have to be ratified by the voters of the county. If a non-charter county fails to adopt its own structure within four years of the effective date of the constitution, an instrument of government would be provided by the General Assembly.

The Committee is of the opinion that the non-charter counties will have ample time to provide their own structures for the effective exercise of the new and broad powers granted them by the constitution. Ultimate control, however, should be in the General Assembly to provide structure for those non-charter counties failing or refusing to act.

Subsection (b) permits the existing county governments to exercise full powers during the interim period.

Under subsection (c) provision is made for amendment of a county's instrument of government.

Section 11.05. Municipal Corporations.

A county may provide by public local law for the creation, incorporation, changing, merging, dissolution and altering of boundaries of its municipal corporations and may delegate powers to them. No existing municipal corporation may be dissolved or be subject to the withdrawal of any existing powers without either its consent or the consent of the General Assembly by law.

COMMENT:

Section 11.05 is proposed as the entire constitutional provision on municipal corporations. Since the Committee views the municipal corporations as governments of limited jurisdiction within the counties which are granted general governmental powers, the Committee submits that to avoid irresolvable conflicts between the counties and municipal corporations, the counties should be given the power to provide by public local law for the creation of any new municipal corporation within its boundaries and for methods and procedures of incorporating, changing, merging and dissolving such new municipal corporations and altering their boundaries. The Committee suggests that this provision would empower the counties to grant and withdraw to new municipal corporations those powers which the county should determine appropriate.

The Committee further recommends that existing municipal corporations be treated as nonconforming uses, recognizing in their behalf a greater right to continued existence and for the exercise of previously granted powers than would be possessed by municipal corporations created after the effective date of this constitution.

It is proposed that existing municipal corporations not be subject to dissolution or withdrawal of any existing powers except with their approval or with the consent of the General Assembly by law.

The Committee recognizes that certain existing municipal corporations are the predominant and, in fact, strongest forces of local government in certain areas of the State. This provision will not immediately affect those municipalities or cause a revolutionary departure from the present balance. The Committee suggests, however, that local government can only be strengthened through a strengthening of counties.

Section 11.06. Intrastate Intergovernmental Agreement.

Any county, other civil division or municipal corporation may, except to the extent prohibited by law, agree with the State or with any other county, civil division or municipal corporation for the joint administration of any of their functions and powers and the sharing of costs thereof.

COMMENT:

Section 11.06 is designed to insure that there are no state constitutional obstacles to cooperation between the State and its civil divisions, or among the civil divisions themselves. It may be argued that this section is unnecessary, in that there is no prohibition against such agreements in the constitution; however, the Committee feels that its presence will serve the useful purpose of strengthening intrastate cooperation, which appears to offer a valuable means of solving the increasingly difficult urban problems straddling the State's political boundaries.

Section ____.

The General Assembly shall provide from the general funds of the State necessary costs, salaries and expenses incidental to the establishment and administration of all agencies, offices or positions created by it, except local boards of education, or elections required by public general law.

COMMENT:

The Committee also has addressed itself to the problem of the General Assembly creating jobs and government agencies which must be paid for by the local subdivisions. It is the view of the Committee that the state government should provide the necessary funds for the jobs and the agencies which it creates, with the exception of the local boards of education. It should also be required to provide funds for any elections required by public general law. The Committee is of the opinion, however, that this section should more appropriately be a part of the legislative article and for that reason has not assigned it a section number. The Committee believes that this is a decision for the Committee on Style.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

ADDENDUM

ALTERNATIVE SECTION 11.02(a):

(a) Upon the creation by the General Assembly of the boundaries of regions, representative governments for the regions may be established by the General Assembly, or by concurrent action of the county legislative bodies, or by affirmative action of a majority of the registered voters of a proposed region voting upon a petition submitted by the residents of the proposed region bearing the names of registered voters equal to five per cent of those voting for governor in the most recent gubernatorial election.

COMMENT:

Upon further consideration, the Committee is of the opinion that a conflict in interpretation may arise between Section 11.01(b) and Section 11.02(a). It is the thinking of the Committee that the above language clarifies the Commission's intent.

CONSTITUTIONAL CONVENTION COMMISSION

CONTINUATION

OF

SEVENTH REPORT

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

December 3, 1966

RE: ARTICLE XII. INTERGOVERNMENTAL RELATIONS

ARTICLE XII. INTERSTATE GOVERNMENTAL AGREEMENT

Section 12.01. Intergovernmental Cooperation.

Nothing in this Constitution shall be construed to prohibit:

(1) The cooperation of the government of this State with any other governments; or

(2) With the approval of the General Assembly by law, the cooperation of the government of any county or other civil division with any one or more other governments outside the boundaries of the State in the administration of their functions and powers.

COMMENT:

Article XII is designed to insure that there are no state constitutional obstacles to cooperation between the State and its civil divisions with other states, their subdivisions and the federal government.

At its meeting of September 20, 1966, the Commission considered the intergovernmental article contained in the Committee's Fifth Report. Concern was expressed over the unrestricted power there granted local governments permitting agreements with governments outside of Maryland. Accordingly, the Commission directed that this power be qualified and remain under the ultimate control of the State. Subsection (b) would require approval of the General Assembly before a local government could enter into agreements with governments outside the State.

CONSTITUTIONAL CONVENTION COMMISSION

EIGHTH REPORT

(FINAL REPORT)

OF THE

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

MARCH 21, 1967

RE: ARTICLE XI. LOCAL GOVERNMENT
ARTICLE XII. INTERGOVERNMENTAL
RELATIONS

The Committee on Political Subdivisions and Local Legislation recommends the following articles on local government and intergovernmental relations.

ARTICLE XI. LOCAL GOVERNMENT

Section 11.01. Units of Local Government.

(a) For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean an incorporated city, town or village, but shall not include Baltimore City or any county; region shall mean a civil division larger than a single county.

(b) The General Assembly may provide by law for the creation, incorporation, changing, merging, dissolution and the alteration of boundaries of counties and multi-county civil divisions, including intergovernmental authorities and regional representative governments but excluding municipal corporations.

(c) The General Assembly may create, merge, dissolve and alter the boundaries of any county only by a three-fifths vote of the membership of each house.

Section 11.02. Regional Governments and Other Civil Divisions.

(a) Upon the establishment by the General Assembly of the boundaries of regions, representative governments for the regions may be created by the General Assembly by law, or by concurrent action of the county legislative bodies by law, or by affirmative action of a majority of the registered voters of a proposed region voting upon a petition submitted by the residents of the proposed region and signed by a number of registered voters equal to five per cent of those voting for governor in the most recent gubernatorial election.

(b) Any instrument of government of a region shall provide for its amendment by a majority vote of the voters of the region voting on any amendment submitted by the governing body or by petition of the voters in accordance with its provisions.

(c) Powers may be vested in a regional government either by the governing bodies of all counties within or partly within a region relinquishing powers to it, by the General Assembly enacting a law withdrawing specified powers from all counties within or partly within a region, or by the General Assembly delegating powers of the State to a region. All powers so relinquished by the counties or withdrawn by the General Assembly shall thereafter revert only to those respective counties. The power to impose and collect revenues and taxes, and the power

to borrow money may be vested in the regional governments by law, or by the consenting counties.

(d) The General Assembly or other representative governments may grant to intergovernmental authorities the power to impose and collect revenues, to borrow money and to collect taxes imposed by the General Assembly or other representative government.

Section 11.03. Powers of Counties.

(a) A county may exercise any power, other than judicial power, or perform any function which is not denied to it by this Constitution, by its charter or by law which in its terms and in its effects is applicable to all counties or to all counties of its class, and which has not been transferred to another civil division.

(b) Classes of counties, based upon population as determined by the most recent United States Census or upon other criteria, may be provided by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time.

(c) Except as provided in Section 11.01(c) or as otherwise specifically provided in this Constitution, the General Assembly may enact only public general laws which shall, in their terms and in their effects, apply without exception to all counties or to all counties in a class. No county shall be

exempt from any public general law applicable to all counties or to all counties in its class.

Section 11.04. Financial Powers of Counties, Representative Regional Governments and Intergovernmental Authorities.

The assets or credit of a county, representative regional government, or intergovernmental authority shall not in any manner be given or loaned to any individual, association, or corporation unless a public purpose shall be served thereby and unless authorized by an act passed by three-fifths vote of its governing or authorizing body stating such public purpose.

Section 11.05. Structure of County Governments.

(a) At its first session following adoption of this Constitution, the General Assembly shall provide by public general law methods and procedures by which either the county by public local law or the voters of a county by petition may enact an instrument of government subject to ratification by a majority vote of the voters of the county voting thereon. The General Assembly shall provide by public general law for an instrument of government which shall become effective for all counties existing on the first day of January of the fourth year following the effective date of this Constitution which have not previously adopted a local instrument of government which has been submitted to and approved by a majority vote of the qualified voters voting thereon.

(b) Unless and until changed pursuant to the provisions of this section, county governments existing at the date of this Constitution shall continue.

(c) Any instrument of government of a county shall provide for its amendment by a majority vote of the voters of the county voting on any amendment submitted by the governing body or by the petition of the voters in accordance with its provisions.

Section 11.06. Municipal Corporations.

A county may provide by public local law for the creation, incorporation, changing, merging, dissolution and altering of boundaries of municipal corporations within its boundaries and may delegate powers of the county to them. No existing municipal corporation may be dissolved or be subject to the withdrawal of any existing powers set forth in its charter without either the consent of its governing body or the consent of the General Assembly by law.

Section 11.07. Intrastate Intergovernmental Agreement.

Any county, other civil division or municipal corporation may, except to the extent prohibited by law, agree with the State or with any other county, civil division or municipal corporation for the joint administration of any of their functions and powers and the sharing of costs thereof.

ARTICLE XII. INTERSTATE GOVERNMENTAL AGREEMENT

Section 12.01. Intergovernmental Cooperation.

This Constitution shall be construed to permit, except to the extent prohibited by law:

(1) The cooperation of the government of this State with any other government; or

(2) The cooperation of the government of any county or other civil division with any one or more other governments outside the boundaries of the State in the administration of their functions and powers.

SECTION-BY-SECTION ANALYSIS OF THE LOCAL GOVERNMENT ARTICLE

The Committee here presents an article on local government which provides for the maximum amount of flexibility in the organization and powers of local units of government. Its basic premise is that the General Assembly should be free to establish different forms of local governments, exclusive of municipal corporations, when and if the need arises. However, the Committee has placed primary emphasis upon strengthening county governments as the basic system of local government. The State of Maryland has strong county traditions and the Committee is not adverse to seeing them preserved.

Home rule has been made directly available to the existing counties whether they are charter or non-charter. The road to effective exercise of the powers inherent in home rule has likewise been established by provisions whereby the General Assembly will

provide by law for methods and procedures by which the governing bodies of non-charter counties may enact an instrument of government subject to ratification by the voters.

There are several important reasons why the Committee recommends a broad grant of power to the counties. The localities will be set free to solve their problems unless the General Assembly denies them this freedom. They will also be free from the time-consuming process of going hat-in-hand to the General Assembly seeking permission before moving into a new area of governmental endeavor. It will thus stimulate initiative in solving problems at the local level. It will also free the localities from the dead hand of a General Assembly which refuses to act.

In effect, what the Committee is recommending here is the reversal of "Dillon's Rule," which holds that local units of government should exercise only express powers granted by the State. Under the broad grant of power, a county would be able to act on its own initiative, and such initiative could be frustrated only by an equally positive act on the part of the state legislature removing a county power of government.

This broad grant of power, in effect, gives residual powers to the counties. At the same time, however, this approach leaves the General Assembly free (through its power of withdrawal) to solve on a statewide or regional basis those problems which have outgrown the individual subdivisions.

Classification of the counties is provided. In this manner, the General Assembly will have jurisdiction over subdivisions which might, under the broad grant of powers, start engaging in practices detrimental to the State as a whole.

The important effect of the broad grant of power is to revitalize and stimulate the initiative of local governments. The General Assembly, at its initial session following the adoption of the new constitution, will have the responsibility of clarifying legislative lines by determining what are the appropriate subjects for general law and matters of statewide concern. In the process of withdrawing such powers, the General Assembly will effect a much needed redefinition of the patterns of county-state relationships. It is the firm belief of the Committee that the General Assembly, as it embarks on this important redefinition of powers, will produce a more rational system than the present complicated structure of state-county-municipality relationships.

With respect to municipalities, the Committee is recommending a new approach. Since all general legislative powers not reserved to the General Assembly have been granted to the county, the Committee believes that the powers of municipalities should flow from the county governments. It is therefore recommended that, with respect to municipalities to be created in the future, these municipalities receive their powers from the counties subject to withdrawal by the counties. With respect to existing municipalities, the Committee recommends that they not be subject to dissolution or withdrawal of existing powers without the consent of the county and the municipality or the consent of the General Assembly.

Section 11.01. Units of Local Government.

(a) For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean an incorporated city, town or village, but shall not include Baltimore City or any county; region shall mean a civil division larger than a single county.

(b) The General Assembly may provide by law for the creation, incorporation, changing, merging, dissolution and the alteration of boundaries of counties and multi-county civil divisions, including intergovernmental authorities and regional representative governments but excluding municipal corporations.

(c) The General Assembly may create, merge, dissolve and alter the boundaries of any county only by a three-fifths vote of the membership of each house.

COMMENT:

This section begins by defining certain units of local government. The Committee recommends that Baltimore City be considered a county for the reason that it has long been organized as a home rule county. It is thought that constitutional affirmance of this fact will avoid confusion in the proposed new approach to local government. In similar fashion, definition is initially given to "municipal corporation," a unit specifically dealt with in Section 11.06. Region is also defined as a civil division which would extend across county lines. As more fully explained hereafter, the regional approach to local government

is not felt by the Committee to be immediately adaptable to Maryland's needs. However, specific provision is made for the creation of regions by act of the General Assembly at a future date and, for that reason, a definition of the term is deemed appropriate.

Subsection (b) vests in the General Assembly extensive power for determining the overall structure of local government in the State of Maryland. The Committee is proposing that the counties continue as the basic units of local government. It is recognized, however, that future needs may well render the counties ineffective and require the establishment of revised units of local government. This can be accomplished by virtue of the powers granted the General Assembly under this subsection.

Specific mention is made of regional governments as a form of local government available to the General Assembly. This unit of government, in effect, would be an intermediate tier between the county and state governments. The Committee feels such governments should be of a representative, as opposed to an appointive, nature. They also should be "multi-county."

With regard to the procedure for creating, merging, dissolving and altering the boundaries of counties, the Committee carefully considered a requirement that there be approval of the areas affected. Mandatory referendum was a suggested method. The Committee decided, however, that such a requirement would have the practical effect of precluding change and restricting the General Assembly in an area where it should be free to act. Accordingly, it was resolved that an extraordinary vote of the

General Assembly would provide the necessary safeguards against arbitrary change.

Section 11.02. Regional Governments and Other Civil Divisions.

(a) Upon the establishment by the General Assembly of the boundaries of regions, representative governments for the regions may be created by the General Assembly by law, or by concurrent action of the county legislative bodies by law, or by affirmative action of a majority of the registered voters of a proposed region voting upon a petition submitted by the residents of the proposed region and signed by a number of registered voters equal to five per cent of those voting for governor in the most recent gubernatorial election.

(b) Any instrument of government of a region shall provide for its amendment by a majority vote of the voters of the region voting on any amendment submitted by the governing body or by petition of the voters in accordance with its provisions.

(c) Powers may be vested in a regional government either by the governing bodies of all counties within or partly within a region relinquishing powers to it, by the General Assembly enacting a law withdrawing specified powers from all counties within or partly within a region, or by the General Assembly delegating powers of the State to a region. All powers so relinquished by the counties or

withdrawn by the General Assembly shall thereafter revert only to those respective counties. The power to impose and collect revenues and taxes, and the power to borrow money may be vested in the regional governments by law, or by the consenting counties.

(d) The General Assembly or other representative governments may grant to intergovernmental authorities the power to impose and collect revenues, to borrow money and to collect taxes imposed by the General Assembly or other representative government.

COMMENT:

The Committee recommends a separate section dealing with the creation of and powers to be vested in regional governments and other civil divisions. Subsections (a), (b) and (c) are designed to facilitate transition to regional representative governments should this form of local government be adopted by the people of Maryland. It should be noted that this section, to be operative, depends upon action by the General Assembly under Section 11.01 in that regions must first be created.

Subsection (a) provides that, once regions have been established by the General Assembly, representative governments for those regions may be created in three different ways:

(1) by the General Assembly by law, or

(2) by the joint action of the legislative bodies in the counties comprising the region, or

(3) by the petition of five per cent of the voters followed by affirmative action of a majority of the registered voters in a proposed region.

Although the Committee recommends that the boundaries of regions be set by the General Assembly, it feels that the local governments and the people affected should be permitted to determine the structure of such a local governmental body.

Subsection (b) adds an additional safeguard in that provision is made for amending a regional instrument of government. In this manner, a form of regional governments imposed by the General Assembly by reason of inaction of the local governing bodies or the people could be changed at a later time.

Subsections (c) and (d) deal with powers to be transferred to regional governments and intergovernmental authorities, respectively. It was realized by the Committee that a vacuum would exist without express provision for the transfer of powers to a regional government in that all powers would be vested in either the counties or the State. Accordingly, the Committee recommends in subsection (c) that powers should be vested in the regional governments in several alternative ways:

(1) by the governing bodies of all counties within or partly within the region relinquishing powers;

(2) by the General Assembly enacting a public law withdrawing powers from the counties within or partly within the region;

(3) by the delegation of powers of the State.

Specific provision is made for the granting of taxing powers to regional governments.

Intergovernmental authorities are restricted under subsection (d) to the imposition and collection of revenues, borrowing money and collecting taxes imposed by the General Assembly or other local government.

Section 11.03. Powers of Counties.

(a) A county may exercise any power, other than judicial power, or perform any function which is not denied to it by this Constitution, by its charter or by law which in its terms and in its effects is applicable to all counties or to all counties of its class, and which has not been transferred to another civil division.

(b) Classes of counties, based upon population as determined by the most recent United States Census or upon other criteria, may be provided by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time.

(c) Except as provided in Section 11.01(c) or as otherwise specifically provided in this Constitution, the General Assembly may enact only public general laws which shall, in their terms and in their effects, apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law applicable to all counties or to all counties in its class.

COMMENT:

Section 11.03(a) is the key section of this local government article. The language provides that all counties may exercise any power not specifically denied to them by general law, the home rule instrument of government or the state constitution.

Here the counties are endowed, through the constitution, with all the power of the General Assembly, but the latter may deny the counties any power by general act. This provision thus sets the counties free to solve any problem they wish unless the General Assembly specifically denies them the power to solve that problem through general legislation. Thus the presumption in judicial interpretation would be that the county has the power to act unless it has been specifically denied.

It is to be noted that no restriction is imposed on the counties' power to tax. It is the Committee's recommendation that the constitution place no limitations whatsoever on the financial and taxing powers of the counties.

The merit of this plan is that it frees the counties from having to seek permission from the General Assembly before they can move into a new area of governmental endeavor. It thus stimulates initiative in solving problems at the local level. It also frees the counties from being hemmed in by a General Assembly that refuses to act.

The presumption under this plan is that the counties will be protected from undue interference by the General Assembly in that any withdrawal of power will have to be by general legislation.

Further protection is afforded by defining general laws as those that are general in terms and effects. Thus, to withdraw power from a particular county, the General Assembly would be required to withdraw power from all the counties in the same classification simultaneously. The assumption is that such a withdrawal of power from all the counties in a particular classification would be very difficult to achieve unless it had the support of a majority of the counties and a majority of the voters in the counties.

This broad grant of powers, in effect, gives all residual powers of government to the counties. At the same time, however, this approach leaves the General Assembly free (through its power of withdrawal) to solve on a statewide and regional basis those problems which have outgrown the boundaries of a particular subdivision or group of subdivisions. The goal here is to unshackle the counties from domination by the General Assembly, but at the same time not to shackle the ability of the General Assembly to grapple with statewide problems and regional problems.

This plan is a significant revision of the present method by which county powers are handled under the Constitution. Article XI (City of Baltimore) and Article XI-A (Local Legislation) specifically empower the General Assembly to allocate county powers.

The effect of Articles XI and XI-A has been to hamstring the county governments in Maryland, forcing them to the time-consuming process of getting a specific grant of power from the

General Assembly before they attempt to solve new and unusual problems. It has also left the counties completely at the mercy of "ripper" bills passed in the General Assembly, which take powers away from the county governments and vest them in the local delegation to the General Assembly. Adoption of a broad grant of powers would help to ameliorate both of these problems in Maryland local government.

Hand in hand with this broad grant of power to the subdivisions, however, this section (in subsection (b)) provides that classification powers be granted to the General Assembly when dealing with counties in terms of general law.

Classification by the General Assembly is required because if a county, under the broad grant of power, engaged in practices detrimental to the State as a whole, the General Assembly would have to pass laws applying to the entire State in order to bring this one county under control. The Committee feels there would be little likelihood of such statewide legislation being enacted simply to bring one county under adequate statewide control.

Therefore, in order to give the General Assembly a measure of control over the subdivisions, the Committee recommends that the General Assembly be permitted to classify the counties into groups for purposes of general legislation. A general law thus would be any law that in terms and effect is applicable to all the counties or to those in one classification. The Committee feels, however, that this power of classification should not be

without limitations. It is provided that the counties be grouped into not more than five classes with not less than three counties in any one class. By such means, greater consideration and care must be exercised by the General Assembly. Similarly, there is the restriction that no more than one such grouping into five or fewer classes shall be in effect at any time, thereby precluding the General Assembly from classifying for each piece of legislation. It is further provided that the basis of classification shall be on population or upon such other criteria as are determined by the General Assembly to be appropriate. This would allow classification on a non-population basis (regional, economic, etc.) should such a need arise.

The practice of local exemption is also prohibited. The use of these so-called "general local laws" has blurred the lines between general and local legislation and has caused much loss of legislative effectiveness and uniformity.

What the Committee is attempting here is to free both the county governments and the General Assembly to solve the problems of the people of Maryland. Under the broad grant of county powers, the counties are given freedom to do everything they can to solve their own problems. On the other hand, the powers of withdrawal and classification give the General Assembly power to reach down and take over the problems of a particular group of counties when they become of statewide concern. Thus the effect of the broad grant of power, coupled with the power of withdrawal, unshackles the county government but, at the same time, leaves the General

Assembly a high measure of control over all local governments in the State of Maryland.

Section 11.04. Financial Powers of Counties, Representative Regional Governments and Intergovernmental Authorities.

The assets or credit of a county, representative regional government, or intergovernmental authority shall not in any manner be given or loaned to any individual, association, or corporation unless a public purpose shall be served thereby and unless authorized by an act passed by three-fifths vote of its governing or authorizing body stating such public purpose.

COMMENT:

The Committee proposes that there be credit restrictions placed upon the local governments similar to those imposed upon the State. Accordingly, this section requires that, before the assets or credit of a local government be given or loaned, a public purpose must be served and there be an act passed by extraordinary vote of the local governing or authorizing body stating such public purpose.

It is felt by the Committee that these limitations are necessary in order to conform with state requirements.

Section 11.05. Structure of County Governments.

(a) *At its first session following adoption of this Constitution, the General Assembly shall provide by public*

general law methods and procedures by which either the county by public local law or the voters of a county by petition may enact an instrument of government subject to ratification by a majority vote of the voters of the county voting thereon. The General Assembly shall provide by public general law for an instrument of government which shall become effective for all counties existing on the first day of January of the fourth year following the effective date of this Constitution which have not previously adopted a local instrument of government which has been submitted to and approved by the majority vote of the qualified voters voting thereon.

(b) Unless and until changed pursuant to the provisions of this section, county governments existing at the date of this Constitution shall continue.

(c) Any instrument of government of a county shall provide for its amendment by a majority vote of the voters of the county voting on any amendment submitted by the governing body or by the petition of the voters in accordance with its provisions.

COMMENT:

Elaborate provisions are to be found in the existing Constitution for the formation of charter and code governments for counties.

The Committee is of the opinion that such provisions are more properly the subject of general legislation and, therefore, recommends that the General Assembly be required to provide

methods and procedures whereby the governing body or the voters of a non-charter county may petition for the enactment of an instrument of government which thereafter would have to be ratified by the voters of a county.

This mandate to the General Assembly would necessitate passage of laws permitting the people or the local governing bodies to structure a vehicle of government capable of exercising the broad powers granted under this proposed constitution. It is further provided under subsection (a) that the General Assembly shall provide an instrument of government for those counties not having taken the initiative during the four-year period following the adoption of the Constitution. It is felt by the Committee that this provision will cause the counties to act and will not be an undue imposition. Of overriding importance is the fact that home rule will require revised forms of local government.

Provision is made under subsection (c) for amendment of an instrument of government by the voters of a county. Should the General Assembly's instrument be imposed under subsection (a) and found to be unpopular or unworkable, it could readily be changed.

The Committee debated at great length whether to provide for "self-enforcing" home rule in the constitution itself. The concept of "self-enforcing" home rule holds that the legislature cannot be trusted to provide adequately for home rule and therefore the details of creating a home rule structure of government should be spelled out explicitly in the constitution. The present Constitution of Maryland contains such a "self-enforcing"

home rule provision.

The Committee decided, however, that home rule is now an established concept in Maryland government and that the state legislature could be trusted to write effective laws guaranteeing the easy establishment of home rule in the various counties. The Committee feels that this is particularly true in light of the fact that the legislature has been reapportioned to give a stronger voice to the urbanized counties that already have home rule governments. There also is a considerable gain in flexibility because the state legislature can adjust any home rule regulations through simple legislation rather than a constitutional amendment should altered conditions in the future dictate such changes.

Section 11.06. Municipal Corporations.

A county may provide by public local law for the creation, incorporation, changing, merging, dissolution and altering of boundaries of municipal corporations within its boundaries and may delegate powers of the county to them. No existing municipal corporation may be dissolved or be subject to the withdrawal of any existing powers set forth in its charter without either the consent of its governing body or the consent of the General Assembly by law.

COMMENT:

Section 11.06 is proposed as the entire constitutional provision on municipal corporations. Since the Committee views the municipal corporations as governments of limited jurisdiction within counties which are granted general governmental powers,

the Committee submits that, to avoid conflicts between the counties and municipal corporations, the counties should be given the power to provide by public local law for the creation of any new municipal corporation within their boundaries and for methods and procedures of incorporating, changing, merging and dissolving such new municipal corporations and altering their boundaries. The Committee suggests that this provision would empower the counties to grant and withdraw to new municipal corporations those powers which the county should determine appropriate.

The Committee further recommends that existing municipal corporations be treated as nonconforming uses, recognizing in their behalf a greater right to continued existence and for the exercise of previously granted powers than would be possessed by municipal corporations created after the effective date of this constitution. It is proposed that existing municipal corporations not be subject to dissolution or withdrawal of any existing powers except with their approval or with the consent of the General Assembly by law.

The Committee recognizes that certain existing municipal corporations are the predominant and, in fact, strongest forces of local government in certain areas of the State. This provision will not immediately affect those municipalities or cause a revolutionary departure from the present balance. The Committee suggests, however, that local government can only be strengthened through a strengthening of counties.

Section 11.07. Intrastate Intergovernmental Agreement.

Any county, other civil division or municipal corporation may, except to the extent prohibited by law, agree with the State or with any other county, civil division or municipal corporation for the joint administration of any of their functions and powers and the sharing of costs thereof.

COMMENT:

Section 11.07 is designed to insure that there are no state constitutional obstacles to cooperation between the State and its civil divisions, or among the civil divisions themselves. It may be argued that this section is unnecessary, in that there is no prohibition against such agreements in the constitution. The Committee feels, however, that the presence of this language will serve the useful purpose of strengthening intrastate cooperation, which appears to offer a valuable means of solving the increasingly difficult urban problems straddling the State's political boundaries.

ARTICLE XII. INTERSTATE GOVERNMENTAL AGREEMENT

Section 12.01. Intergovernmental Cooperation.

This Constitution shall be construed to permit, except to the extent prohibited by law:

(1) The cooperation of the government of this State with any other government; or

(2) The cooperation of the government of any county or other civil division with any one or more

other governments outside the boundaries of the State in the administration of their functions and powers.

COMMENT:

The Committee recommends a separate article in the new constitution guaranteeing intergovernmental relations.

Article XII is designed to insure that there are no state constitutional obstacles to cooperation between the State and other states and federal government. Local governments may also cooperate with governments outside of the State unless prevented from doing so by act of the General Assembly.

The Committee is aware that it is very doubtful that any other part of the new Constitution would prohibit the intergovernmental cooperation guaranteed by this article. The Committee believes, however, that it is wise to draw attention in the new constitution to the need for an intergovernmental approach to many of the problems that now face the people of the State of Maryland. By specifically guaranteeing these relations in the new constitution, the Committee hopes to make both the voters and public officials of the State aware that such an approach is available and quite clearly constitutional.

Respectfully submitted,

Committee on Political Subdivisions
and Local Legislation

Clarence W. Miles
L. Mercer Smith
John B. Howard, Reporter

Hal C. B. Clagett, Chairman
Franklin S. Burdette
Leah S. Freedlander

